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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 45a.)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 77

MONTANA-DAKOTA UTILITIES CO., PETITIONER,

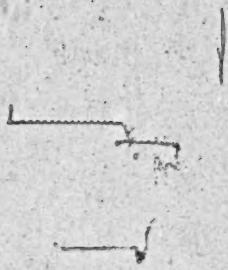
vs.

NORTHWESTERN PUBLIC SERVICE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 17, 1950.

CERTIORARI GRANTED OCTOBER 9, 1950.



United States Court of Appeals,

EIGHTH CIRCUIT.

No. 13,887.
CIVIL.

NORTHWESTERN PUBLIC SERVICE COMPANY, A CORPORATION, APPELLANT,

vs.

MONTANA-DAKOTA UTILITIES CO., A CORPORATION, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA.

FILED DECEMBER 20, 1948.

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Pleas and proceedings in the United States Court of Appeals for the Eighth Circuit, at the March Term, 1950, of said Court, before the Honorable John B. Sanborn, the Honorable Seth Thomas and the Honorable Harvey M. Johnsen, Circuit Judges.

Attest: E. E. KOCH,
Clerk of the United States
(Seal) Court of Appeals for the
Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the 20th day of December, A. D. 1948, a transcript of record pursuant to an appeal taken from the United States District Court for the District of South Dakota, was filed in the office of the Clerk of the United States Court of Appeals for the Eighth Circuit, in a certain cause wherein Northwestern Public Service Company, a Corporation, was Appellant, and Montana-Dakota Utilities Co., a Corporation, was Appellee.

Printed record composed of five volumes, Volume I consisting of pages a to 496, inclusive, Volume II consisting of pages 497 to 736, inclusive, Volume III consisting of pages 737 to 1008, inclusive, Volume IV consisting of pages 1009 to 1488, inclusive, and Volume V consisting of pages 1489 to 1984, inclusive, on which the appeal was heard in the United States Court of Appeals for the Eighth Circuit, and proceedings in said Court of Appeals, composed of one volume, Volume VI, consisting of pages 1985 to 2003, inclusive, are in the words and figures following, to-wit:

In the District Court of the United States, in and for the District of South Dakota, Western Division.

Montana-Dakota Utilities Co., a corporation,
Plaintiff,
vs.
Northwestern Public Service Company, a corporation,
Defendant.
No. 241 W. Div. Civ.

Be It Remembered, that on the 3rd day of February, A. D. 1947, there was [file] filed in the above entitled court, on behalf of the plaintiff, Complaint; which Complaint is in words and figures the following, to-wit:

Complaint.

United States District Court,
District of South Dakota,
Western Division.

Montana-Dakota Utilities Co., a corporation,
Plaintiff,
vs.
Northwestern Public Service Company, a corporation,
Defendant.
#241 W. Civ.

Comes now the plaintiff and for its complaint against the defendant herein alleges:

For a first cause of action:

I.

The amount in controversy herein, exclusive of interest and costs, exceeds Three Thousand Dollars ($3,000.00) and

the action arises under the Federal Power Act, as hereinafter more fully appears, and under a law of the United States regulating commerce under said Federal Power Act.

II.

Plaintiff is a corporation organized and existing under the laws of the State of Delaware and on the 27th day of June, 1935, duly qualified as a foreign corporation in the State of South Dakota, and has been continuously so qualified since that date, and on the 2nd day of July, 1935, duly qualified as a foreign corporation in the State of North Dakota, and has been continuously so qualified since said date.

III.

Defendant is a Delaware corporation qualified to do business in the State of South Dakota and has been so qualified ever since the 23rd day of December, 1923.

IV.

At all times hereinafter mentioned, except as hereinafter otherwise stated, Northern Power and Light Company was a corporation existing under the laws of the State of Delaware and duly qualified to do business in the States of North Dakota and South Dakota, and North Dakota Power & Light Company was a Delaware corporation duly qualified to do business in the State of North Dakota and since the 13th day of July, 1939, in the State of South Dakota.

V.

At all times hereinafter mentioned, except as hereinafter stated, Dakota Public Service Company, a Delaware corporation resulting from the merger of Northern Power and Light Company and North Dakota Power & Light Company, as hereinafter stated, has been a Delaware corporation duly qualified as a foreign corporation in the States of North Dakota and South Dakota.

VI.

On the 1st day of July, 1939, the aforesaid Northern Power and Light Company and North Dakota Power & Light Company, pursuant to the laws of the State of Delaware, merged into one corporation, North Dakota Power & Light Company, being the surviving corporation pursuant to the terms of said merger, and changing its name in said merger proceedings to Dakota Public Service Company. Pursuant to the terms of said merger, Dakota Public Service Company became the owner of all of the public utility business of said Northern Power and Light Company, in addition to the properties on the date of said merger owned by North Dakota Power & Light Company, and thereafter said Dakota Public Service Company owned and operated as a public utility the properties formerly owned by it, hereinafter in this complaint referred to, and the properties on the date of said merger owned by Northern Power and Light Company.

VII.

Pursuant to the provisions of the laws of the State of Delaware hereinafter referred to, said Northern Power and Light Company and North Dakota Power & Light Company made and entered into an agreement of merger providing, among other things, that Northern Power and Light Company be merged into North Dakota Power & Light Company as the surviving corporation and that the name of said North Dakota Power & Light Company be changed to Dakota Public Service Company and that said Dakota Public Service Company would become the owner of all the property, real, personal and mixed, and all debts due on whatsoever account to the said merging corporations and the owner of all things in action belonging to said merging corporations. Said agreement of merger was duly adopted by the directors and stockholders of said corporation and duly recorded with the Secretary of State of the State of Delaware on the 1st day of July, 1939, and recorded with the Recorder of New Castle County, Delaware, on the 1st day of July, 1939, and filed and recorded with the Secretary of State of the State of South Dakota on the 13th day of July, 1939.

The corporation laws of the State of Delaware provide that when two corporations of said state merge as was done by the aforesaid Northern Power and Light Company and North Dakota Power & Light Company and adopt a merger agreement as aforesaid and said agreement shall have been signed, acknowledged, filed and recorded as aforesaid, then the surviving corporation shall possess all the rights, privileges, powers and franchises, as well of a public as of a private nature, of the merging corporations and shall possess all and singular the rights, privileges, powers and franchises of each of the merging corporations and all property, real, personal and mixed, and all debts due to each of the merging corporations on whatever account and all things in action or belonging to each of the merging corporations and all property rights, privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the surviving corporation as they were of the merging corporations.

VIII.

There is attached hereto and marked Exhibit "A" and expressly by reference made a part hereof a tabulation showing for the years stated thereon the officers and directors of the defendant, Northern Power and Light Company, North Dakota Power & Light Company and Dakota Public Service Company, and in each instance shown on said Exhibit "A", when the name of a person holding an office or a directorship in any of said companies is identical with the name of a person holding an office or directorship in any other of said companies, then and in each of said instances all of said [officers] were held by one and the same person.

IX.

On the 7th day of February, 1937, defendant, pursuant to Order #36 of the Federal Power Commission, filed with the Federal Power Commission Northwestern Public Service Company Rate Schedule F. P. C. No. 1, of which a true and correct copy is hereto attached, marked Exhibit "A-1" and expressly by reference made a part hereof. Without complying with the requirements of Section

205 (d) of the Federal Power Act and on the 7th day of October, 1936, the defendant and said Northern Power and Light Company made and entered into a contract, denominated an interconnection contract, a true and correct copy thereof being hereto attached, marked Exhibit "B" and by reference made a part hereof. At the time of the execution of the original of said Exhibit "B", F. E. Kruesi, who executed said agreement for defendant as president of defendant, and C. L. Sandstedt, who executed the original of Exhibit "B" as Secretary of the defendant and Secretary of Northern Power and Light Company, were respectively President and Secretary of Northern Power and Light Company, and C. J. Strike, who executed the original of said Exhibit "B" as Vice President of Northern Power and Light Company, was Vice President of Northwestern Public Service Company, and at said time the Directors of Northwestern Public Service Company were F. E. Kruesi, C. L. Sandstedt, C. J. Strike, J. F. Buckmier and G. R. McArthur, and at said time the Directors of Northern Power and Light Company were said Kruesi, Strike, Sandstedt and Buckmier and S. W. White.

X.

Plaintiff is informed and believes and on such information and belief alleges that the portion of the Aberdeen interconnected substation and control equipment, the Gettysburg substation, and the transmission lines referred to in said contract, Exhibit "B", and for which a charge was made in Article VI of said contract, were all constructed some time in 1930 for the sole use and benefit of the defendant.

XI.

For several years immediately prior to January 1, 1936, defendant and said Northern Power and Light Company had exchanged electric energy, the energy delivered by Northern Power and Light Company to defendant having been generated in North Dakota and transmitted to defendant in South Dakota where the same was metered and sold to defendant for resale and thereafter transmitted by defendant and resold to customers of its utility business in South Dakota, and some of the energy delivered

by defendant to Northern Power and Light Company having been generated in the State of South Dakota and transmitted to Northern Power and Light Company and sold to it by defendant for resale and by Northern Power and Light Company transmitted to North Dakota and there resold to its public utility customers. Prior to January 1, 1936, the defendant had never made any charge against Northern Power and Light Company or North Dakota Power & Light Company on account of any rental or any other charge on account of the transmission of electric energy over the aforesaid transmission lines or through said substations, but beginning as of the 1st day of January, 1936, to and including June 30, 1939, Northern Power and Light Company was billed by Northwestern Public Service Company for transmission line charges provided for in Article VI of said Exhibit "B" in the sum of Seventy Thousand Dollars ($70,000.00), all of which said Northern Power and Light Company paid to the defendant.

XII.

During said period from January 1, 1936, to and including June 30, 1939, Northern Power and Light Company furnished to Northwestern Public Service Company 20,894,542 kilowatt hours of electric energy and defendant furnished to Northern Power and Light Company only 9,621,021 kilowatt hours of electric energy, all of the aforesaid energy being transmitted through the substations and over the transmission lines referred to in said Exhibit "B."

XIII.

Said contract was made and entered into for the purpose of fixing the terms, rates and charges which would be made by the parties thereto against each other for electric energy and the transmission thereof, said energy to be generated in the State of North Dakota and transmitted to the State of South Dakota, and for electric energy and the transmission thereof, said energy to be generated in the State of South Dakota and transmitted to the State of North Dakota. At the time of the execution of the original of said Exhibit "B," it was contemplated by the

parties thereto that the bulk of the energy to be interchanged would be generated in the State of North Dakota and transmitted to the State of South Dakota, and the bulk of said energy was so generated and transmitted, said bulk of said energy in fact being generated by North Dakota Power and Light Company aforesaid in the State of North Dakota and sold and delivered to the aforesaid Northern Power and Light Company at Driscoll, in North Dakota, or at a point on the North Dakota-South Dakota State Line near Keldron, South Dakita, and from said last mentioned points of delivery transmitted to the lines of the defendant at Barnard, Ipswich and Gettysburg, all located in the State of South Dakota. The said energy thus received by the defendant at Barnard, Ipswich and Gettysburg was by the defendant resold to the retail customers of the defendant in the operation of an electric public utility business by the defendant in the State of South Dakota. Defendant did not file said Exhibit "B", or any copy thereof, with the Federal Power Commission until December 23, 1938, when, without compliance with Section 205 (d) of the Federal Power Act, it filed the same with said Federal Power Commission as Northwestern Public Service Company F. P. C. Schedule No. 3, and the said transmission line charge of One Thousand Six Hundred Sixty-six and 66/100 Dollars ($1,666.66) per month provided for in the original of said Exhibit "B" and which was fixed by the aforesaid common officers and directors purporting to act for both of said corporate parties thereto was without consideration, unjust, unreasonable and unlawful in its entirety, and the defendant unjustly, without consideration, fraudulently, unreasonably, unfairly and unlawfully took and received from said Northern Power and Light Company and caused said Northern Power and Light Company to pay to defendant said amount of Seventy Thousand Dollars ($70,000.00), for which said defendant became indebted to said Northern Power and Light Company; and by reason of the merger of the Northern Power and Light Company and North Dakota Power & Light Company hereinbefore alleged, and by reason of the assignment of claims to the plaintiff as hereinafter alleged, the defendant is now indebted to, and must account to the plaintiff for said amount, with interest thereon from the respective dates of payment thereof to

defendant, which payments were made at the rate of One Thousand Six Hundred Sixty-six and 66/100 Dollars ($1,666.66) per month, beginning with the month of February, 1936, and terminating in the month of July, 1939.

XIV.

On the 19th day of October, 1945, said Dakota Public Service Company, for value, transferred, sold and assigned to plaintiff all claims, demands and causes of action of every kind which it then had against defendant.

For a second cause of action:

I.

Realleges and expressly by reference makes parts of this cause of action the allegations contained in paragraphs I, II, III, IV, V, VI, VII and VIII set forth in plaintiff's first cause of action herein.

II.

From the 1st day of September, 1935, to July 1, 1939, the defendant, through its officers and directors, who were officers and directors in common with Northern Power and Light Company and North Dakota Power & Light Company, caused said North Dakota Power & Light Company to generate in the State of North Dakota and transmit to Northern Power and Light Company at Keldron, South Dakota, and at Driscoll, North Dakota, electrical energy which was in turn by Northern Power and Light Company transmitted to defendant at Gettysburg, Barnard, Ipswich and Aberdeen, South Dakota, and at said points purchased for resale by defendant. The amount of such energy was 12,550,381 kilowatt hours and said energy was of the just and reasonable value of Ninety-four Thousand One Hundred Twenty-seven and 86/100 Dollars ($94,127.86), but the defendant, through its officers and directors aforesaid, caused said Northern Power and Light Company to pay, and said North Dakota Power & Light Company to receive, for said energy only the sum of Sixty-two Thousand Seven Hundred Fifty-one and 90/100 Dollars ($62,751.90),

which was an unjustly and unreasonably and unlawfully low price therefor.

III.

The officers and directors of Northwestern Public Service Company, who were at the same time directors and officers of Northern Power and Light Company as hereinbefore alleged, during the period of time in this cause of action hereinbefore stated, caused said Northern Power and Light Company to deliver the aforesaid energy to Northwestern Public Service Company. That by reason of the facts hereinbefore alleged, the defendant became indebted to and liable to said North Dakota Power & Light Company in the sum of Thirty-one Thousand Three Hundred Seventy-five and 95/100 Dollars ($31,375.95), no part of which has been paid.

IV.

On the 19th day of October, 1945, said Dakota Public Service Company, for value, transferred, sold and assigned to plaintiff all claims, demands and causes of action of every kind which said Dakota Public Service Company then had against defendant.

For a third cause of action:

I.

Realleges and expressly by reference makes parts of this cause of action the allegations contained in paragraphs I, II, III, IV, V, VI, VII and VIII set forth in plaintiff's first cause of action herein.

II.

For about eight (8) years prior to the 1st day of January, 1938, the defendant and Northern Power and Light Company and North Dakota Power & Light Company had exchanged electrical energy transmitted across the North Dakota-South Dakota State Line, the bulk of said energy being generated by North Dakota Power & Light Company in North Dakota and delivered to Northern Power and Light Company and by it sold to defendant in South Dakota for resale, and during none of said years was

any charge made by one of said parties against the other on account of any so-called deficiency in generating capacity of any kind.

III.

On the 7th day of February, 1937, defendant, pursuant to Order #36 of the Federal Power Commission, filed with the Federal Power Commission Northwestern Public Service Company Rate Schedule F. P. C. No. 1, of which a true and correct copy is hereto attached, marked Exhibit "A-1" and expressly by reference made a part hereof. Without complying with the requirements of Section 205 (d) of the Federal Power Act and some time about April 15, 1938, but purporting to act as of the 1st day of January, 1938, defendant, by and through its directors and officers, who were then directors and officers of North Dakota Power & Light Company and Northern Power and Light Company, as hereinbefore alleged, and for the benefit of the defendant and to the detriment of North Dakota Power & Light Company and Northern Power and Light Company, caused said Northern Power and Light Company and said North Dakota Power & Light Company to make and enter into a contract with the defendant, a true and correct copy thereof being hereto attached, marked Exhibit "C" and expressly by reference made a part hereof.

IV.

Said contract was made and entered into for the purpose of fixing terms, rates and charges which would be made by the parties thereto against each other for and in connection with the transmission and sale of electric energy to be generated in the State of North Dakota and transmitted to the State of South Dakota and for electric energy to be generated in the State of South Dakota and transmitted to the State of North Dakota. At the time of the execution of the original of said Exhibit "C," it was contemplated by the parties thereto that the bulk of the energy to be interchanged would be generated in the State of North Dakota and transmitted to the State of South Dakota, and the bulk of said energy was so generated and transmitted, said bulk of said energy in fact

being generated by North Dakota Power & Light Company aforesaid in the State of North Dakota and sold and delivered to the aforesaid Northern Power and Light Company at Driscoll, in North Dakota, or at a point on the North Dakota-South Dakota State Line near Keldron, South Dakota, and from said last mentioned points of delivery transmitted to the lines of the defendant at Barnard, Ipswich and Gettysburg, all located in the State of South Dakota. The said energy thus received by the defendant at Barnard, Ipswich and Gettysburg was by the defendant resold to the retail customers of the defendant in the operation of an electric public utility business by the defendant in the State of South Dakota, and portions of the energy generated by the defendant in the State of South Dakota and sold to said Northern Power and Light Company were transmitted to the State of North Dakota and sold by said Northern Power and Light Company to retail customers in the operation of an electric public utility business in the State of North Dakota. Defendant did not file said Exhibit "C," or any copy thereof, with the Federal Power Commission until December 23, 1938, when, without compliance with Section 205 (d) of the Federal Power Act, it filed the same with said Federal Power Commission as Northwestern Public Service Company F. P. C. Schedule No. 4. Said charge of Thirteen and 20/100 Dollars ($13.20) per kilowatt of firm demand per year referred to in Article VIII of said Exhibit "C" was fixed by the aforesaid common directors and officers purporting to act for all of said corporate parties thereto, was without consideration, unjust, unreasonable and unlawful in its entirety and the defendant unjustly, without consideration, fraudulently, unreasonably, unfairly and unlawfully took and received from Northern Power and Light Company and caused said Northern Power and Light Company to pay to defendant for said so-called firm demand charge the following amounts, in the following years, viz.:

In the year 1938, Twenty-two Thousand Four Hundred Forty Dollars ($22,440.00)

In the year 1939, Nine Thousand Sixty-eight and 40/100 Dollars ($9,068.40).

V.

The original of said Exhibit "C" was a scheme and plan conceived and put into operation by the defendant and its aforesaid directors and officers for the purpose of exacting large charges from Northern Power and Light Company and North Dakota Power & Light Company for the purpose, among other things, of offsetting charges of said Companies for electrical energy generated in North Dakota and transmitted to and sold to defendant for resale in South Dakota.

VI.

On the 19th day of October, 1945, said Dakota Public Service Company, for value, transferred, sold and assigned to plaintiff all claims, demands and causes of action of every kind which it then had against defendant.

For a fourth cause of action:

I.

Realleges and expressly by reference makes parts of this cause of action the allegations contained in paragraphs I, II, III and VIII of plaintiff's first cause of action herein.

II.

At all times in this cause of action alleged, Dakota Public Service Company, a Delaware corporation, resulting from the merger of Northern Power and Light Company and North Dakota Power & Light Company has been a Delaware corporation, duly qualified as a foreign corporation in the States of North Dakota and South Dakota.

III.

On the 7th day of February, 1937, defendant, pursuant to Order #36 of the Federal Power Commission, filed with the Federal Power Commission Northwestern Public Service Company Rate Schedule F. P. C. No. 1, of which a true and correct copy is hereto attached, marked Exhibit "A-1" and expressly by reference made a part hereof. Without complying with the requirements of Section

205 (d) of the Federal Power Act and for several years immediately prior to January 1, 1936, defendant and said Northern Power and Light Company had exchanged electric energy, the energy delivered by Northern Power and Light Company to defendant having been generated in North Dakota and transmitted to defendant in South Dakota where the same was metered and sold to defendant for resale and thereafter transmitted by defendant and resold to customers of its utility business in South Dakota, and some of the energy delivered by defendant to Northern Power and Light Company having been generated in the State of South Dakota and transmitted to Northern Power and Light Company and sold to it by defendant for resale and by Northern Power and Light Company transmitted to North Dakota and there resold to its public utility customers. Prior to January 1, 1936, the defendant had never made any charge against Northern Power and Light Company or North Dakota Power & Light Company on account of any rental or other charge on account of the transmission of electric energy over the transmission lines referred to in Exhibit "D", hereinafter referred to, but on the 7th day of October, 1936, defendant caused Northern Power and Light Company and North Dakota Power & Light Company to make a contract as alleged in paragraphs XI and XII of plaintiff's first cause of action, which said paragraphs are incorporated herein by reference for the purpose of reciting herein the history of the making and execution of said contract, Exhibit "B", referred to in said paragraphs, and the allegations of paragraph XIII of plaintiff's first cause of action herein are by reference incorporated herein for the purpose of reiterating herein the purpose of the said contract. Exhibit "B", therein referred to, and the facts with reference to the filing thereof with the Federal Power Commission.

Paragraphs VI and VII of plaintiff's first cause of action herein are realleged herein and expressly by reference made parts of this cause of action.

On the 1st day of July, 1939, the defendant and said Dakota Public Service Company made and entered into a contract, denominated an interconnection contract, a true and correct copy thereof being hereto attached, marked

Exhibit "D" and expressly by reference made a part hereof. Defendant, working through officers and directors of defendant, who were at the same time officers and directors of Dakota Public Service Company, as hereinbefore alleged, caused said agreement to be entered into by said Dakota Public Service Company for the advantage and benefit of defendant, and to the injury of said Dakota Public Service Company.

IV.

Plaintiff is informed and believes and on such information and belief alleges that the portion of the Aberdeen interconnected substation and control equipment, the Gettysburg substation and the transmission lines referred to in said contract, Exhibit "D", and for which a charge was made in Article VI of said contract, were all constructed some time in 1930 for the sole use and benefit of defendant.

V.

Although under the terms of said contract, neither party bound itself to render to the other any specific or actual service save as such party was from time to time willing and able to render the same, and although defendant knew that it would receive, as it had in the past, the greatest amount of energy and the greatest benefit from said contract, it caused said contract to be executed and complied with by Dakota Public Service Company through the aforesaid common directors and officers.

VI.

The aforesaid contract was made and entered into for the purpose of fixing terms, rates and charges which would be made by the parties thereto against each other for electric energy and the transmission thereof, said energy to be generated in the State of North Dakota and transmitted to the State of South Dakota, and for electric energy and the transmission thereof, said energy to be generated in the State of South Dakota and transmitted to the State of North Dakota. At the time of the execution of the original of said Exhibit "D", it was contemplated by the parties thereto that the bulk of energy to be interchanged would

be generated in the State of North Dakota and transmitted to the State of South Dakota, and the bulk of said energy was so generated and transported, the said bulk of said energy in fact being generated by Dakota Public Service Company aforesaid in the State of North Dakota and sold and delivered to the defendant at Barnard, Ipswich and Gettysburg, South Dakota, for resale by the defendant in the operation of defendant's electric public utility business in the State of South Dakota, and substantial amounts of electrical energy during a considerable portion of the time the original of said Exhibit "D" was in effect were generated by the defendant in the State of South Dakota and transmitted to said Dakota Public Service Company at points in the State of South Dakota for transmission to points in the State of North Dakota for resale. Defendant did not file said Exhibit "D", or any copy thereof, with the Federal Power Commission until January 10, 1940, when, without compliance with Section 205(d) of the Federal Power Act, it filed the same with said Federal Power commission as Northwestern Public Service Company Schedule F. P. C. No. 5-A, and no certificate of concurrence was filed by or on behalf of said Dakota Public Service Company. The said transmission line charge of One Thousand Six Hundred Sixty-six and 66/100 Dollars ($1,666.66) per month provided for in the original of said Exhibit "D" and which was fixed by the aforesaid common officers and directors purporting to act for both of said corporate parties thereto was without consideration, unjust, unreasonable and unlawful in its entirety, and the defendant unjustly, without consideration, fraudulently, unreasonably, unfairly and unlawfully took and received from said Dakota Public Service Company, and caused said Dakota Public Service Company to pay to defendant on account of said transmission line charge, the sum of Ten Thousand Dollars ($10,000.00) for said charge in the year 1939 and the sum of Twenty Thousand Dollars ($20,000.00) for said charge in the year 1940, and the sum of Ten Thousand Dollars ($10,000.00) for said charge in the year 1941.

During the life of said contract, Dakota Public Service Company delivered to defendant 15,961,599 kilowatt hours of electrical energy generated, transmitted and sold as

hereinbefore alleged, and defendant delivered to Dakota Public Service Company only 4,092,454 kilowatt hours of electrical energy.

The net energy sold as aforesaid by Dakota Public Service Company to Northwestern Public Service Company from July 1, 1939, to July 1, 1941, under the terms of said original of said Exhibit "D", was fairly, justly and reasonably of the value of Eighty-nine Thousand Eighteen and 59/100 Dollars ($89,018.59), but the defendant, through its officers and directors aforesaid, paid to said Dakota Public Service Company, and caused said Dakota Public Service Company to receive for said energy, only the sum of Fifty-nine Thousand Three Hundred Forty-five and 74/100 Dollars ($59,345.74), which was an unjustly, unreasonably and unlawfully low and inadequate price therefor.

VII.

By reason of the facts hereinbefore in this cause of action alleged, defendant became liable to and indebted to Dakota Public Service Company in the amount of Sixty-nine Thousand Six Hundred Seventy-two and 85/100 Dollars ($69,672.85), no part of which has been paid.

VIII.

On the 19th day of October, 1945, said Dakota Public Service Company, for value, transferred, sold and assigned to plaintiff all claims, demands and causes of action of every kind which Dakota Public Service Company then had against the defendant.

For a fifth cause of action:

I.

Realleges and expressly by reference makes parts of this cause of action the allegations contained in paragraphs I, II, III and VIII of plaintiff's first cause of action.

II.

At all times in this cause of action alleged, Dakota Public Service Company, a Delaware corporation, resulting from the merger of Northern Power and Light Company and North Dakota Power & Light Company, has been a Delaware corporation duly qualified as a foreign corporation in the States of North Dakota and South Dakota.

III.

On the 7th day of February, 1937, defendant, pursuant to Order #36 of the Federal Power Commission, filed with the Federal Power Commission Northwestern Public Service Company Rate Schedule F. P. C. No. 1, of which a true and correct copy is hereto attached, marked Exhibit "A-1" and expressly by reference made a part hereof. Without complying with the requirements of Section 205 (d) of the Federal Power Act and some time about April 15, 1938, but purporting to act as of the 1st day of January, 1938, defendant, by and through its directors and officers, who were then directors and officers of North Dakota Power & Light Company and Northern Power and Light Company, as hereinbefore alleged, and for the benefit of the defendant and to the detriment of North Dakota Power & Light Company and Northern Power and Light Company, caused said Northern Power and Light Company and said North Dakota Power & Light Company to make and enter into the contract attached to this complaint, marked Exhibit "C" and in the third cause of action herein referred to. Said contract was made and entered into for the purpose of fixing terms, rates and charges which would be made by the parties thereto against each other for and in connection with the transmission and sale of electric energy to be generated in the State of North Dakota and transmitted to the State of South Dakota and for electric energy to be generated in the State of South Dakota and transmitted to the State of North Dakota. At the time of the execution of the original of said Exhibit "C", it was contemplated by the parties thereto that the bulk of the energy to be interchanged would be generated in the State of North Dakota and transmitted to the State of South Dakota, and the

bulk of said energy was so generated and transmitted, said bulk of said energy in fact being generated by North Dakota Power & Light Company aforesaid in the State of North Dakota and sold and delivered to the aforesaid Northern Power and Light Company at Driscoll, in North Dakota, or at a point on the North Dakota-South Dakota State Line near Keldron, South Dakota, and from said last mentioned points of delivery transmitted to the lines of the defendant at Barnard, Ipswich and Gettysburg, all located in the State of South Dakota. The said energy thus received by the defendant at Barnard, Ipswich and Gettysburg was by the defendant resold to the retail customers of the defendant in the operation of an electric public utility business by the defendant in the State of South Dakota, and portions of the energy generated by the defendant in the State of South Dakota and sold to said Northern Power and Light Company were transmitted to the State of North Dakota and sold by said Northern Power and Light Company to retail customers in the operation of an electric public utility business in the State of North Dakota. Defendant did not file said Exhibit "C", or any copy thereof, with the Federal Power Commission until December 23, 1938, when, without compliance with Section 205 (d) of the Federal Power Act, it filed the same with said Federal Power Commission as Northwestern Public Service Company F. P. C. Schedule No. 4.

On the 1st day of July, 1939, the defendant and said Dakota Public Service Company made and entered into a contract, denominated an interchange capacity agreement, a true and correct copy thereof being hereto attached, marked Exhibit "E" and expressly by reference made a part hereof. Defendant, working through officers and directors of defendant, who were at the same time officers and directors of Dakota Public Service Company, as hereinbefore alleged, caused said agreement to be entered into by said Dakota Public Service Company for the advantage and benefit of defendant, and to the injury of said Dakota Public Service Company.

Although under the terms of said contract, Exhibit "E", neither party bound itself to render to the other any specific or actual service save as such party was from time

to time willing and able to render the same, and although the defendant knew that it would receive, as it had in the past, the greatest amount of energy and the greatest benefit from said contract, it caused said contract to be executed and complied with by Dakota Public Service Company through the aforesaid common directors and officers of said Company.

IV.

For nine and one-half (9½) years prior to the execution of the original of said Exhibit "E", parties to said contract had exchanged electrical energy, by far the largest amount thereof being generated by Dakota Public Service Company in North Dakota and by it transmitted to defendant and sold to defendant in South Dakota for resale, and, except as in this complaint alleged in the third cause of action pleaded in this complaint, during none of said years was any charge made by either of the parties to said original of said Exhibit "E" against the other on account of any so-called deficiency in generating capacity. The original of Exhibit "E" was a scheme and plan conceived and put into effect by the officers and directors of Northwestern Public Service Company for the purpose of exacting large charges from Dakota Public Service Company for the purpose, among other things, of offsetting charges of said Dakota Public Service Company for electrical energy then being sold and thereafter to be sold by said Dakota Public Service Company to defendant at an already inadequate price.

V.

The original of Exhibit "E" was made and entered into for the purpose of fixing terms, rates and charges which would be made by the parties thereto against each other for and in connection with the transmission and sale of electric energy to be generated in the State of North Dakota and transmitted to the State of South Dakota and for electric energy to be generated in the State of South Dakota and transmitted to the State of North Dakota. At the time of the execution of the original of said Exhibit "E", it was contemplated by the parties thereto that the

bulk of the energy to be interchanged would be generated in the State of North Dakota and transmitted to the State of South Dakota, and the bulk of said energy was so generated and transmitted, said bulk of said energy in fact being generated by Dakota Public Service Company aforesaid in the State of North Dakota and transmitted, sold and delivered to the defendant at Barnard, Ipswich and Gettysburg, all located in the State of South Dakota. The said energy thus received by the defendant at Barnard, Ipswich and Gettysburg was transmitted by the defendant and resold to the retail customers of the defendant in the operation of an electric public utility business by the defendant in the State of South Dakota, and portions of the energy generated by the defendant in the State of South Dakota were transmitted by defendant to Dakota Public Service Company and by it transmitted to the State of North Dakota and sold by said Dakota Public Service Company to retail customers in the operation of an electric public utility business in the State of North Dakota. Defendant did not file said Exhibit "E", or any copy thereof, with the Federal Power Commission until January 10, 1940, when, without compliance with Section 205 (d) of the Federal Power Act, it filed the same with said Federal Power Commission as Northwestern Public Service Company F. P. C. Schedule No. 5-B, and no certificate of concurrence was filed by or on behalf of Dakota Public Service Company. Said charge of Thirteen and 20/100 Dollars ($13.20) per kilowatt of firm demand per year referred to in Article VIII of said Exhibit "E" was fixed by the aforesaid common directors and officers purporting to act for all of said corporate parties thereto, was without consideration, unjust, unreasonable and unlawful in its entirety and the defendant unjustly, without consideration, fraudulently, unreasonably, unfairly and unlawfully took and received from Dakota Public Service Company and caused said Dakota Public Service Company to pay to defendant for said so-called firm demand charge the following amounts, in the following years, viz.:

In the year 1939, Nine Thousand Sixty-eight and 40/100 Dollars ($9,068.40)

In the year 1940, Twelve Thousand Six Hundred Eighty-five and 20/100 Dollars ($12,685.20)

In the year 1941, Two Thousand One Hundred Thirty-eight and 40/100 ($2,138.40);

and by reason of the facts hereinbefore alleged, defendant became indebted to said Dakota Public Service Company in the aforesaid amounts, no part of which has been paid.

VI.

On the 19th day of October, 1945, said Dakota Public Service Company, for value, transferred, sold and assigned to plaintiff all claims, demands and causes of action of every kind which it then had against the defendant.

For a sixth cause of action:

I.

Realleges and expressly by reference makes parts of this cause of action the allegations contained in paragraphs I, II, III, and VIII of plaintiff's first cause of action.

II.

At all times in this cause of action alleged, Dakota Public Service Company, a Delaware corporation, resulting from the merger of Northern Power and Light Company and North Dakota Power & Light Company, has been a Delaware corporation duly qualified as a foreign corporation in the States of North Dakota and South Dakota.

III.

On the 1st day of July, 1941, the defendant and said Dakota Public Service Company made and entered into a contract, a true and correct copy thereof being hereto attached, marked Exhibit "F" and expressly by reference made a part hereof. Defendant, working through officers and directors of defendant, who were at the same time officers and directors of Dakota Public Service Company as hereinbefore alleged, caused said agreement to be entered into by said Dakota Public Service Company for the advantage and benefit of defendant, and to the injury of said Dakota Public Service Company.

IV.

For eleven and one-half (11½) years prior to the execution of the original of said Exhibit "F", the parties to said original contract had exchanged electrical energy, by far the largest amount thereof being generated by Dakota Public Service Company, and during none of said years was any charge made by either of the parties to said original of Exhibit "F" against the other on account of any so-called deficiency in generating capacity, except as hereinbefore set forth in the third and fifth causes of action pleaded in this complaint. The original of said Exhibit "F" was a scheme and plan conceived and put into operation by the defendant through its aforesaid officers and directors for the purpose of exacting large charges from Dakota Public Service Company for the advantage and benefit of the defendant, and, among other purposes, to offset charges of Dakota Public Service Company for electrical energy then being sold and thereafter to be sold by Dakota Public Service Company to the defendant at an already inadequate price.

V.

The original of Exhibit "F" was made and entered into for the purpose of fixing terms, rates and charges which would be made by the parties thereto against each other for and in connection with the transmission and sale of electric energy to be generated in the State of North Dakota and transmitted to the State of South Dakota and for electric energy to be generated in the State of South Dakota and transmitted to the State of North Dakota. At the time of the execution of the original of said Exhibit "F", it was contemplated by the parties thereto that the bulk of the energy to be interchanged would be generated in the State of North Dakota and transmitted to the State of South Dakota, and the bulk of said energy was so generated and transmitted, said bulk of said energy in fact being generated by Dakota Public Service Company aforesaid in the State of North Dakota and transmitted, sold and delivered to the defendant at Barnard, Ipswich and Gettysburg, all located in the State of South Dakota. The said energy thus received by the defendant at Barnard, Ipswich and Gettysburg was transmitted by the

defendant and resold to the retail customers of the defendant in the operation of an electric public utility business by the defendant in the State of South Dakota, and portions of the energy generated by the defendant in the State of South Dakota were transmitted by defendant to Dakota Public Service Company and by it transmitted to the State of North Dakota and sold by said Dakota Public Service Company to retail customers in the operation of an electric public utility business in the State of North Dakota. Defendant did not file said Exhibit "F", or any copy thereof, with the Federal Power Commission until February 28, 1942, when, without complying with the requirements of Section 205 (d) of the Federal Power Act, it filed the same with said Federal Power Commission as Northwstern Public Service Company F. P. C. Schedule No. 6. Said charge of Thirteen and 20/100 Dollars ($13.20) per kilowatt of firm demand per year referred to in Article VIII of said Exhibit "F" was fixed by the aforesaid common directors and officers purporting to act for all of said corporate parties thereto, was without consideration, unjust, unreasonable and unlawful in its entirety and the defendant unjustly, without consideration, fraudulently, unreasonably, unfairly and unlawfully took and received from Dakota Public Service Company, and caused said Dakota Public Service Company to pay to defendant, for said so-called firm demand charge the following amounts, in the following years, viz.:

In the year 1941, Two Thousand One Hundred Thirty-eight and 40/100 Dollars ($2,138.40)

In the year 1942, Seventeen Thousand One Hundred Ninety-nine and 60/100 Dollars ($17,199.60)

In the year 1943, Eight Thousand Five Hundred Fourteen Dollars ($8,514.00)

In the year 1944, Nine Thousand Nine Hundred Ninety-two and 40/100 Dollars ($9,992.40)

In the year 1945 (through October 19th), Eighteen Thousand Four Hundred Twenty and 25/100 Dollars ($18,420.25);

and by reason of the facts hereinbefore alleged, defendant became indebted to said Dakota Public Service Company in the aforesaid amounts, no part of which has been paid.

VI.

Plaintiff is informed and believes and on such information and belief alleges that the portion of the Aberdeen interconnected substation and control equipment, the Gettysburg substation, and the transmission lines referred to in said Exhibit "F", for which a charge was made pursuant to said original of said Exhibit "F", were all constructed some time in 1930 for the defendant's own use and benefit.

VII.

Although under the terms of said contract, Exhibit "F", neither party bound itself to render to the other any specific or actual service save as such party was from time to time willing and able to render the same, and although the defendant knew that it would receive, as it had in the past, the greatest amount of energy and the greatest benefit from said contract, it caused said contract to be executed and complied with by Dakota Public Service Company through the aforesaid common directors and officers of said Company.

Subsequent to the execution of said contract and during the term thereof through the 19th day of October, 1945, defendant delivered to Dakota Public Service Company 5,471,154 kilowatt hours of electric energy, whereas during the same period, Dakota Public Service Company delivered to defendant 49,270,000 kilowatt hours of electric energy.

VIII.

For several years immediately prior to January 1, 1936, defendant and said Northern Power and Light Company had exchanged electric energy, the energy delivered by Northern Power and Light Company to defendant having been generated in North Dakota and transmitted to defendant in South Dakota where the same was metered and sold to defendant for resale and thereafter transmitted by defendant and resold to customers of its utility business in South Dakota and some of the energy delivered by defendant to Northern Power and Light Company having been generated in the State of South Dakota and trans-

mitted to Northern Power and Light Company and sold to it by defendant for resale and by Northern Power and Light Company transmitted to North Dakota and there resold to its public utility customers.

Thereafter no transmission line charges were ever made against Dakota Public Service Company or its predecessor companies except as hereinbefore alleged in the third and fifth causes of action herein and, as stated in said causes of action, the agreements under which the defendant purported to make charges against Dakota Public Service Company and its predecessors were never properly and validly filed with the Federal Power Commission.

The said transmission line charges referred to herein and in said Exhibit "F" and fixed by the aforesaid common officers and directors purporting to act for both of the parties to said contract were without consideration, unjust, unreasonable and unlawful in their entirety, and the defendant unjustly, without consideration, fraudulently, unreasonably, unfairly and unlawfully took and received from Dakota Public Service Company, and caused said Dakota Public Service Company to pay to the defendant, on account of said transmission line charges, at the rates set forth in said contract, the following amounts, in the following years, to-wit:

In the year 1941, Ten Thousand Dollars ($10,000.00)

In the year 1942, Twenty Thousand Dollars ($20,000.00)

In the year 1943, Twenty Thousand Dollars ($20,000.00)

In the year 1944, Twenty Thousand Dollars ($20,000.00)

In the year 1945, (through October 19th), Sixteen Thousand Twenty-one and 51/100 Dollars ($16,021.51).

IX.

From the 1st day of July, 1941, to the 19th day of October, 1945, the defendant, through its officers and directors, who were officers and directors in common with Dakota Public Service Company, caused said Dakota Public Service Company to generate electrical energy in the State of North Dakota and transmit the same to the

defendant at Gettysburg, Barnard and Ipswich, South Dakota, and there to sell the same to the defendant, and defendant transmitted the same and resold the same to its public utility customers in the State of South Dakota, and the net energy thus generated, transmitted and sold by Dakota Public Service Company to defendant was fairly, justly and reasonably of the value of Three Hundred Twenty-eight Thousand Four Hundred Ninety-one and 35/100 Dollars ($328,491.35), but the defendant, through its aforesaid officers and directors, paid to said Dakota Public Service Company, and caused said Dakota Public Service Company to receive for said energy, only the sum of Two Hundred Eighteen Thousand Nine Hundred Ninety-four and 23/100 Dollars ($218,994.23), which was an unjustly, unreasonably and unlawfully low price therefor.

X.

By reason of the facts hereinbefore in this cause of action alleged, defendant became indebted to the Dakota Public Service Company in the amount of Two Hundred Fifty-one Thousand Seven Hundred Eighty-three and 28/100 Dollars ($251,783.28), no part of which has been paid.

XI.

On the 19th day of October, 1945, said Dakota Public Service Company, for value, transferred, sold and assigned to the plaintiff all claims, demands and causes of action, of every kind, which said Dakota Public Service Company then had against defendant.

Wherefore, plaintiff demands judgment against the defendant:

(1) Declaring each of the contracts pleaded in plaintiff's complaint to be void.

(2) Declaring all of the aforesaid charges for interconnection facilities and transmission line charges to be unjust and unreasonable and unlawful in their entirety.

(3) Determining the fair and just and reasonable amount owing to plaintiff on account of the aforesaid electrical energy purchased by defendant.

(4) Requiring defendant to account to the plaintiff for all funds received by defendant from Northern Power and Light Company, North Dakota Power & Light Company and Dakota Public Service Company as set forth in plaintiff's complaint or as may be shown by such accounting.

(5) For Four Hundred Seventy-eight Thousand Two Hundred Thirty-two and 48/100 Dollars ($478,232.48), with interest at the rate of six per cent (6%) per annum from the date of each payment of each portion thereof by North Dakota Power & Light Company, Northern Power and Light Company and Dakota Public Service Company to the defendant.

(6) For such other and further relief as is just and equitable.

(7) For plaintiff's costs and disbursements herein.

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Mobridge, South Dakota,
JULIUS SKAUG,
Mobridge, South Dakota,
Attorneys for Plaintiff.

JOHN C. BENSON
and
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Minneapolis 2, Minnesota,
Of Counsel.

	Northwestern Public Service Company	North Dakota Power & Light Company	Northern Power and Light Company
1935			
President and Director	F. E. Kruesi	F. E. Kruesi	F. E. Kruesi
Vice-President and Director	(1) W. F. Gazin	(1) W. R. Gazin	(1) W. F. Gazin
Vice-President and Director	C. J. Strike	C. J. Strike	C. J. Strike
Treasurer	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Assistant Secretary and Assistant Treasurer	(5) J. F. Buckmier (6) R. L. Walsh	(2) J. F. Buckmier (3) R. L. Walsh	(2) J. F. Buckmier (3) R. L. Walsh
Director	(4) G. R. McArthur (5) John E. Barber (5) D. C. Green (5) Geo. A. Mills (5) N. P. Zech J. F. Buckmier	S. W. White (4) M. C. Blackstun	S. W. White (4) M. C. Blackstun
1936			
President and Director	F. E. Kruesi	F. E. Kruesi	F. E. Kruesi
Vice-President and Director	C. J. Strike	C. J. Strike	C. J. Strike
Treasurer	C. L. Sandstedt	C. L. Sandstedt	C. L. Standstedt
Secretary and Director	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Assistant Secretary and Assistant Treasurer	(1) Wm. M. Dunn (2) E. W. Dempewolf	(1) Wm. M. Dunn (2) E. W. Dempewolf	(2) E. W. Dempewolf (1) Wm. M. Dunn
Directors	G. R. McArthur J. F. Buckmier	S. W. White M. C. Blackstun	S. W. White J. F. Buckmier

(1) Jan. 1 to Jan. 31
(2) Jan. 1 to Mar. 20
(3) Mar. 20 to Oct. 25
(4) Jan. 31 to Dec. 31
(5) Jan. 1 to Feb. 26
(6) Feb. 26 to Oct. 25

(1) Feb. 28 to Nov. 27
(2) Nov. 27 to Dec. 31

Tabulation of Officers and Directors

1937	Northwestern Public Service Company	North Dakota Power & Light Company	Northern Power and Light Company
President and Director	(6) F. E. Kruesi (7) C. J. Strike	(1) F. E. Kruesi (2) C. J. Strike	(1) F. E. Kruesi (2) C. J. Strike
Vice-President and Director	(6) C. J. Strike (7) G. R. McArthur	(1) C. J. Strike (2) G. R. McArthur	(1) C. J. Strike (2) G. R. McArthur
Treasurer	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Assistant Secretary and Assistant Treasurer	E. W. Dempewolf (5) J. A. Connor	E. W. Dempewolf (5) J. A. Connor	E. W. Dempewolf (5) J. A. Connor
Directors	(7) B. L. Palm G. R. McArthur J. F. Buckmier	S. W. White (4) M. C. Blackstun (3) J. F. Buckmier	S. W. White (3) J. F. Buckmier (4) M. C. Blackstun

(1) Jan. 1 to Aug. 10
(2) Aug. 10 to Dec. 31
(3) Mar. 10 to Dec. 31
(4) Jan. 1 to Jan. 10
(5) May 4 to Dec. 15
(6) Jan. 1 to June 21
(7) June 21 to Dec. 31

1938			
President and Director	(1) C. J. Strike (3) A. B. Sanborn	(1) C. J. Strike (2) A. B. Sanborn	(1) C. J. Strike (2) A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur	G. R. McArthur
Vice-President and Director	(3) C. L. Sandstedt	(3) C. L. Sandstedt	(3) C. L. Sandstedt
Treasurer	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	(4) C. L. Sandstedt	(4) C. L. Sandstedt	(4) C. L. Sandstedt
Secretary	(3) J. F. Buckmier	(3) J. F. Buckmier	(3) J. F. Buckmier
Assistant Secretary and Assistant Treasurer	E. W. Dempewolf	E. W. Dempewolf	E. W. Dempewolf
Directors	B. L. Palm J. F. Buckmier	S. W. White J. F. Buckmier	S. W. White J. F. Buckmier

(1) Jan. 1 to June 1
(2) July 1 to Dec. 31
(3) June 7 to Dec. 31
(4) Jan. 1 to June 7

1939	Northwestern Public Service Company	Dakota Public Service Company (North Dakota Power & Light Company) (a)	Northern Power and Light Company (Until merger July 1, 1939)
President and Director	A. B. Sanborn	A. B. Sanborn	A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur	G. R. McArthur
Vice-President and Director	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Treasurer	C. L. Sandstedt	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	J. F. Buckmier	J. F. Buckmier	J. F. Buckmier
Assistant Secretary and Assistant Treasurer	E. W. Dempewolf	E. W. Dempewolf	E. W. Dempewolf
Directors	(1) W. J. Allen (1) W. S. Fantle (1) O. C. Stokke (2) B. L. Palm	S. W. White	S. W. White

(1) April 18 to December 31

(2) January 1 to April 18

(a) Agreement of merger authorized directors of surviving corporation to hold office until next annual meeting of stockholders of surviving corporation or until successors were elected and qualified.

1940		
President and Director	A. B. Sanborn	A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur
Vice-President and Director	C. L. Sandstedt	C. L. Sandstedt
Treasurer	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	J. F. Buckmier	J. F. Buckmier
Assistant Secretary and Assistant Treasurer	E. W. Dempewolf	E. W. Dempewolf
Directors	W. J. Allen W. S. Fantle O. C. Stokke	S. W. White

Tabulation of Officers and Directors

	Northwestern Public Service Company	Dakota Public Service Company
1941		
President and Director	A. B. Sanborn	A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur
Vice-President and Director	C. L. Sandstedt	C. L. Sandstedt
Treasurer	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	J. F. Buckmier	J. F. Buckmier
Assistant Secretary and Assistant Treasurer	(1) E. W. Dempewolf (2) Ralph Mauch	(1) E. W. Dempewolf (2) Ralph Mauch
Directors	W. J. Allen W. S. Fantle O. C. Stokke	S. W. White

(1) January 1 to April 21
(2) April 21 to December 31

1942		
President and Director	A. B. Sanborn	A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur
Vice-President and Director	C. L. Sandstedt	C. L. Sandstedt
Treasurer	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	J. F. Buckmier	J. F. Buckmier
Assistant Secretary and Assistant Treasurer	(1) Ralph Mauch (2) Margaret Frost	(1) Ralph Mauch (2) Margaret Frost
Directors	W. J. Allen W. S. Fantle O. C. Stokke	S. W. White

(1) January 1 to September 14
(2) September 14 to December 31

Tabulation of Officers and Directors

	Northwestern Public Service Company	Dakota Public Service Company
1943		
President and Director	A. B. Sanborn	A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur
Vice-President and Director	C. L. Sandstedt	C. L. Sandstedt
Treasurer	C. L. Sandstedt	C. L. Sandstedt
Secretary and Director	J. F. Buckmier	J. F. Buckmier
Assistant Secretary and Assistant Treasurer	Margaret Frost	Margaret Frost
Directors	W. J. Allen W. S. Fantle O. C. Stokke	S. W. White
1944		
President and Director	A. B. Sanborn	A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur
Vice-President and Director	(1) C. L. Sandstedt	(1) C. L. Sandstedt
Treasurer	(1) C. L. Sandstedt (2) Wm. M. Dunn	(1) C. L. Sandstedt (2) Wm. M. Dunn
Secretary and Director	J. F. Buckmier	J. F. Buckmier
Assistant Secretary and Assistant Treasurer	Margaret Frost	Margaret Frost
Directors	W. J. Allen W. S. Fantle O. C. Stokke (2) Wm. M. Dunn	S. W. White (3) Wm. M. Dunn

(1) Jan. 1 to June 28 (deceased)
(2) July 24 to Dec. 31
(3) Aug. 16 to Dec. 31

Tabulation of Officers and Directors

1945	Northwestern Public Service Company	Dakota Public Service Company to October 19, 1945
President and Director	A. B. Sanborn	A. B. Sanborn
Vice-President and Director	G. R. McArthur	G. R. McArthur
Treasurer and Director	Wm. M. Dunn	Wm. M. Dunn
Secretary and Director	J. F. Buckmier	J. F. Buckmier
Assistant Secretary and Assistant Treasurer	Margaret Frost	Margaret Frost
Directors	W. J. Allen	S. W. White
	(1) W. S. Fantle	
	O. C. Stokke	

(1) January 1 to September 17 (Deceased)

Exhibit "A-1".

[thwestern] Public Service Co.

Rate Schedule F. P. C. No. 1
Effective Date Jan. 31, 1936

Northwestern Public Service Company

5351-R

Copy

(Federal Power Commission
Feb. 7-1936 Received)

January 28, 1936

Federal Power Commission
Washington, D. C.

Gentlemen:

Your letter of December 21, 1935 with which you enclosed your Order #36 was duly received. Reference is made to the extension of time until January 31, 1936 in which to furnish the information requested.

In reply we beg to advise as follows:

1. Northwestern Public Service Company purchases and interchanges surplus electric energy under an oral agreement between it and Northern Power and Light Company. Under normal conditions the movement of the bulk of the energy is from Northern Power and Light Company to Northwestern Public Service Company although the movement is reversed in events of emergency. Deliveries under this agreement are made at Barnard, Ipswich and Gettysburg, all located in South Dakota, Northwestern Public Service Company owning no lines interconnected with those of Northern Power and Light Company located outside the state of South Dakota. Energy delivered to Northwestern Public Service Company under this oral agreement may be generated in part at Mobridge, in South Dakota, but the bulk of the energy so delivered is generated in North Dakota at plants owned by North Dakota Power and Light Company and sold by North Dakota Power and Light Company to Northern Power and Light Company and delivered to the latter company at Driscoll in North

Dakota or at a point on the North Dakota-South Dakota state line near Keldron. The price of the surplus electric energy sold or interchanged under this agreement is 5 mills per kilowatt-Hour. This agreement is terminable at the will of either party.

We do not concede that the purchase or interchange of energy under this oral agreement is in interstate commerce as an analysis of all the facts leads to the conclusion that no interstate movement is involved but that it has ceased before delivery of energy to or from Northwestern Public Service Company.

So far as we are advised, aside from the above transaction, this company neither owns nor operates any facilities for the transmission or sale of electric energy at wholesale in interstate commerce for resale.

This information is filed without prejudice or waiver of any legal or constitutional rights of the company with respect to the Public Utility Act of 1935 or any provision thereof.

Yours very truly,
C. J. STRIKE,
Vice-President.

Exhibit "B".

Northwestern Public Service Company
Rate Schedule FPC No. 3,
Effective date, January 1, 1936,
Filing date, December 23, 1938.

(Federal Power Commission
Received Jan. 25, 1939)

Interconnection Contract.

Northwestern Public Service Company.

Northern Power and Light Company.

This Contract and Agreement, Made and entered into this 7 day of October, 1936, by and between Northwestern Public Service Company, a Delaware Corporation, hereinafter referred to as "Northwestern Company," and North-

ern Power and Light Company, a Delaware Corporation, hereinafter referred to as "Northern Company."

Witnesseth:

Whereas, both companies desire to interchange electric power and energy in order to utilize existing power plants to their maximum capacity and to provide emergency service, one to the other, and,

Whereas, Northwestern Company has heretofore, at its own cost and expense, constructed inter-connection facilities with the transmission system of Northern Company, which facilities are more specifically described as follows:

Item 1. Portion of Aberdeen's inter-connected sub-station and control equipment used exclusively for inter-connection with Northern Company.

Item 2. Gettysburg sub-station used exclusively for inter-connection with Northern Company and serving Gettysburg, a Northern Company property.

Item 3. Twenty-two/thirty-eight kilovolt transmission lines from Aberdeen to Barnard and from Aberdeen to Ipswich, totaling fifty (50) miles for interconnection with Northern Company.

Item 4. Thirty-three kilovolt transmission line from Highmore to Gettysburg, a distance of sixty-two (62) miles for interconnection at Gettysburg with Northern Company, and,

Whereas, the inter-connection facilities above listed make possible the interchange of energy between the respective companies, thereby enabling both companies to render more reliable service and utilize existing plants to their maximum efficiency.

Now, therefore, the parties hereto agree as follows, to-wit:

Article I.

Definition of Terms.

For the purpose of this Agreement, certain terms herein used are defined as follows:

The term, "points of delivery", means the various points where the transmission lines of Northwestern

Company meet the transmission lines of Northern Company.

The term, "firm power", means that power which either company is obligated to furnish the other and for which the receiving company would be obligated to pay.

The term, "surplus energy", means that energy which either Company may, in its judgment, have available from time to time and desires to sell to the other Company and which energy the other Company desires to receive.

The term, "emergency power", means that power which either Company, upon receiving due notice from the other Company, can and does furnish the other Company for a short period of time during an emergency caused by the failure or breakdown of any of the facilities of the other party.

The term, "billing period", means that period between successive meter readings taken for the purpose of power and energy billing which readings will be taken as nearly as practicable on the 25th day of each current month.

Article II.

Term of Contract.

This Contract will become effective on January 1, 1936, and will continue thereafter for a period of five (5) years. It will thereafter remain in effect until cancelled by eighteen (18) months' written notice by either party.

It is understood that such notice may be given on or before July 1, 1939, to terminate the contract as of January 1, 1941. In like manner, such notice may be given on any date after July 1, 1939, for termination of the contract in eighteen (18) months' from date of notice.

Article III.

General Agreement.

Subject to the terms and conditions of this Agreement, each Company will sell surplus energy to the

other, and each Company will furnish, one to the other, such emergency power as the one Company may need and the other Company have available during such emergency. Neither Company hereunder obligates itself to furnish or receive any firm power.

Article IV.

Voltage and Frequency.

Power and energy to be delivered or interchanged hereunder will be of a character commonly known as three-phase, alternating current at approximately 60 cycles and at approximately 33 kilovolts and 22,000/38,000 kilovolts respectively.

Article V.

Rate.

Northwestern Company will pay to Northern Company for surplus energy during each billing period a sum equivalent to .5 cents per kilowatt-hour.

Northern Company will pay to Northwestern Company for surplus energy during each billing period a sum equivalent to .5 cents per kilowatt-hour.

It is understood between the parties hereto that fuel prices and generating efficiencies may change, causing the desirability of an adjustment in the energy rates contained in this Article. In January of each year the parties hereto will review production costs and if necessary re-determine the energy rates to be contained herein. Such revision, if any, will be made by supplements to this Contract.

It is understood that billing under the rates contained herein will become effective July 1, 1936. The first review will then be made in January, 1937, and each January thereafter.

Article VI.

Transmission Line Charges

As Northern Company's share of the fixed charges, maintenance and operating expenses relating to the inter-connection facilities enumerated above, North-

ern Company agrees to pay Northwestern Company beginning January 1, 1936, the sum of $1,666.66 a month. This charge is over and above all energy charges provided under Article V above.

Upon the termination of this Contract by either party, Northern Company will pay Northwestern Company, in addition to all other charges hereinbefore enumerated, a sum equivalent to one-half the actual cost to Northwestern Company to remove and dismantle the inter-connection facilities enumerated above and to return all material to the store-room of Northwestern Company in Aberdeen, South Dakota.

Northern Company has no obligation to pay Northwestern Company for any part of the construction cost of the inter-connection facilities enumerated above, or for the use of such facilities for any period prior to January 1, 1936.

Article VII.

Emergency Power.

In the event of total or partial failure of the facilities for generation or transmission of electric power of either party, the other party agrees to use all reasonable effort and all facilities at its command (after the requirements of the other customers of the party delivering such power have been met) to furnish power and energy to the receiving party for short periods of time and to the extent of such failure or interruption and only for such period of time as may be required to restore such facilities, by the exercise of every reasonable effort on the part of the party possessed of such facilities, to their normal operating condition.

Billing for such emergency power and energy will be on the basis of the energy charge as provided in Article V above, plus whatever additional expense the delivering party may incur in placing in operation and operating high priced plants and facilities. It is the intent that the delivering Company will not make a profit on such emergency power but will be reimbursed for all added expense that such party may incur during such emergency.

No service will be emergency service, however, unless due notice has been given by the party in need of emergency power to the other party and the other party agrees to furnish such emergency power.

Article VIII.

Metering.

Suitable standard 33 kilovolt and/or 22,000/38,000 kilovolt metering equipment agreeable to both parties will be installed, owned and maintained by Northwestern Company at the points of delivery (or as near thereto as practicable.) Meters will be of such number, type and arrangement, as will show separately the amounts of power and energy supplied at each location. Metering equipment will be tested at intervals not exceeding sixty (60) days with a representative of each party present. If, as the result of such tests, the metering equipment is found to be inaccurate, it will be restored to a condition of accuracy. If inaccuracy exceeds 2%, the readings of the meters taken during the period (30) days preceding (or during such shorter period as may have intervened since a periodic test) will be corrected and payments adjusted accordingly, prior to which period no correction of such readings will be made.

Northern Company may at its own expense, install and maintain additional metering equipment at the point of delivery for the purpose of checking the meters installed and maintained by Northwestern Company, and the readings thereof.

If the meters installed by Northwestern Company wholly failed to register the power and energy during any period of time for any reason whatsoever, the amount of power and energy delivered during each period will be measured by means of the meters installed by Northern Company, and if the Northern Company has not so installed meters, or if its meters have wholly failed to register during this period of time, the amounts of power and energy so delivered will be estimated according to the amounts previously delivered under sub-stantially similar conditions.

Article IX.

Continuity of Service.

Both Companies will exercise reasonable diligence and care to avoid interruptions of delivery of power and energy hereunder but will not be liable for any damage or loss that may be occasioned by any failure or interruptions caused by fires, strikes, riots, floods, lightning, storms, acts of God, civil disturbances, action of public authority, litigation, breakdown, or causes beyond its reasonable control. Either Company may interrupt service to make necessary repairs or to make changes in equipment or to install new equipment but only for such time as may be unavoidable. Reasonable advance notice of such interruption will be given if the nature of the situation permits.

Article X.

Liability Clause.

Each party hereto will save and keep the other harmless from any and all loss, cost, damage or expense, including reasonable attorneys' fees, for, or by reason of, any claim for injury to its own employees at any location and to other persons or property occasioned by the electric power and energy or equipment on its own side of the points of delivery hereunder, however caused, provided however, that each party will be liable for any damage to persons or property arising out of the maintenance and/or operation of transmission lines it may own beyond the points of delivery herein defined.

Article XI.

Bills and Payments.

Bills for power and energy delivered hereunder will be rendered each month as nearly as may be practicable on or before the [fifty] (5th) day of the calendar month, and will be payable within ten (10) days from the date thereof.

If either Company [failes] to perform any of its obligations under this Contract including the prompt payment of monthly bills, the other Company may suspend delivery

of power and energy and will not be liable in any manner for loss or damage arising from such suspension. No such suspension will interfere with the enforcement by the other Company of any other legal right or remedy or relieve the delinquent Company from liability to pay the transmission line charges during any such suspension. No delay by either Company in enforcing any of its rights hereunder will be deemed a Waiver of such rights.

Article XII.

Conclusion.

This Contract will inure to, and be binding upon the successors and assigns of the respective parties.

In Witness Whereof, the parties hereto have caused this contract to be executed by these duly authorized officers, and impressed with their respective corporate seals the date and year first above written.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By F. E. KRUESI,

President.

Attest:

C. L. SANDSTEDT,

Secretary.

NORTHERN POWER AND LIGHT COMPANY,

By C. J. STRIKE,

Vice-President.

Attest:

C. L. SANDSTEDT,

Secretary.

Exhibit "C".

Northwestern Public Service Company
Rate Schedule F. P. C. No. 4,
Also Supplement No. 1
to
Rate Schedule F. P. C. No. 3,
Effective date January 1, 1938,
Filing date December 23, 1938.

Interchange Capacity AGR.

Northwestern Public Service Company

North Dakota Power & Light Company

Northern Power & Light Company ..... "Northern".

(Federal Power Commission
Received Dec. 23, 1938)

This agreement was made and entered into this 1st day of January 1938, by and between Northwestern Public Service Company, a corporation organized under the laws of Delaware, herinafter referred to as "Northwestern", North Dakota Power & Light Company, likewise organized under the laws of Delaware, hereinafter referred to as "North Dakota", and Northern Power & Light Company, also organized under the laws of Delaware, herinafter referred to as "Northern".

Witnesseth:

Whereas, "Northwestern" is engaged in the business of producing and selling electrical energy within the geographical area of the eastern half of the state of South Dakota, such territorial limits as they exist at the date hereof being so designated and shown on the plat attached hereto, marked Exhibit "A", and hereby made a part hereof; and

Whereas, "North Dakota" is engaged in the business of producing and selling electrical energy within a geographical area located in the central and southwestern parts of the state of North Dakota, such territorial limits as they exist at the date hereof being so designated and

shown on the plat attached hereto marked Exhibit "A", and hereby made a part hereof; and

Whereas, "Northern" is engaged in the business of producing and selling electrical energy within geographical areas located in the north central and south central parts of the states of South Dakota and North Dakota respectively, such hereof being so designated and shown on the plat marked Exhibit "A", attached hereto, and hereby made a part hereof; and

Whereas, "Northwestern" and "Northern" have provided the inter-connection facilities and the basis for the transfer of energy all as provided for in the interconnection agreement dated October 7th, 1936, and by reference, made a part hereof, and

Whereas, the transmission systems of the said companies are now interconnected as shown on the plat attached marked Exhibit "A", and such systems are now operated as an inter-connected system, and

Whereas, it is the desire of the three companies to make full and mutual use of the inter-connection of their respective transmission systems for the interchange of reserve or spare capacity in their combined systems as such reserve or spare capacity may obtain in their respective generating stations and may from time to time be available; it being recognized that economy of supply is to be realized by all the companies when any one of them is entitled to draw upon the reserve or spare capacity of each of the others, whether for use in the Receiving Company's (as hereinafter defined), general light and power business or for the purpose of securing to the Receiving Company a reserve capacity during emergencies or during the overhauling of equipment, or whenever other need may arise; and it being further recognized that it is to the interest not only of the Companies themselves but of the public, that their respective systems shall be developed with such proper harmonious co-operation as will tend to prevent avoidable expenditures and thereby tend to minimize the cost of producing and supplying electrical energy; and it being further recognized that if two or more neighboring supply companies are adequately interconnected it is not

necessary for any of them to own and maintain as large an amount of reserve or spare capacity as though each Company were separate and isolated from the others; and

Whereas, it is now the desire of each of the parties hereto that under and pursuant to the agreement such as this is intended to be, a flexible and equitable basis be established for the apportionment of charges covering the interchange or use of said reserve or spare generating capacity as may now or hereafter obtain either incident to the actual exchange of such capacity or its employment for standby purposes all in order that the three companies may be operated at the highest efficiency and the lowest practical cost, and

Now therefore, in consideration of the premises and of One Dollar and other good and valuable considerations in hand paid by each of the parties to each of the others, the receipt of which payment is hereby by each of the parties confessed, and in consideration of the mutual covenants and conditions hereinafter set forth, and of the benefits expected to be derived herefrom, the parties hereby agree as follows:

Article I—Definitions

Section 1—The term "Supplying Company", as used in this agreement, shall, so far as appropriate, designate and apply to any party hereto which, under the terms hereof, for the time being, shall be obligated to stand ready to supply electrical capacity and/or energy to any other of said parties, or from which capacity and/or energy for the time being shall be desired hereunder by any other of said parties.

Section 2—The term "Receiving Company" shall, so far as appropriate, designate and apply to any party hereto which, under the terms hereof, for the time being, shall be entitled to obtain or be obtaining, or be desirous of obtaining, capacity from any other of said parties.

Section 3—The term "point of delivery" shall mean any point (to be, in each case, however, a point on the boundary line between the respective territories of the parties hereto, unless otherwise agreed) at which, under the terms hereof,

the respective transmission lines of any two parties shall join, and at which capacity and energy shall be delivered hereunder by any party hereto to any other party hereto. Said "points" of delivery are shown on the attached plat marked Exhibit "A".

Section 4—The term "interconnected system" shall mean the combined system of generating station and interconnecting transmission lines of all the parties hereto, all or some part of the capacity of which is available for the transfer [or] energy from the system of one company to that of another.

Section 5—The term "station generating capacity" with respect to any generating station owned, leased, or otherwise controlled by any of the parties hereto, shall mean the rated capacity in kilowatts of such station, or the number of kilowatts of electrical energy such station can supply to the interconnected system, whichever is lower.

Section 6—The term "Company generating capacity", with respect to any party hereto, in any month as may be hereinafter designated shall mean the sum total capacity in kilowatts of (1) all the several station generating capacities, as above defined of such party, in such month, and (2) the amount of firm capacity (as hereinafter defined) now or hereafter purchased in each month, by such party, when such firm capacity is of the same general character with relation to such party's operation as an equal amount of steam turbine or internal combustion engine driven generating capacity owned or leased by such party.

Section 7—The term "interconnected generating capacity", shall mean the sum of the Company generating capacities, as above defined, of all the parties hereto.

Section 8—The term "Company system maximum demand", with respect to any party, for such month as hereinafter designated shall mean the demand (in kilowatts) made upon the system of such party during that half hour in such month in which demand was greater than in any half hour previously recorded.

Section 9—The term "interconnected system maximum demand", with respect to any party, for such month as

hereinafter designated shall mean the arithmetical sum of Company system maximum demand during that half hour in such month in which such combined demand was greater than in any other half hour.

Section 10—The term "Company reserve capacity", with respect to any party in any given month, shall mean the excess (in kilowatts) of the Company generating capacity of such party, over and above the highest previous recorded Company system maximum demand (in kilowatts) of such party during the term hereof.

Section 11—The term "per cent Company reserve capacity", with respect to any party, at any given time shall mean the percentage which the Company reserve capacity of such party (as defined in the last preceding paragraph) at such time bears to the Company system maximum demand of such party.

Section 12—The term "interconnected system reserve capacity", shall mean the net total of the Company reserve capacities, as hereinbefore defined (after deducting any deficiency in Company generating capacity of any party or parties) of all the parties hereto.

Section 13—The term "per cent interconnected system reserve capacity", shall pertain to the interconnected system and, at any given time, shall mean the percentage which the "interconnected reserve capacity" then bears to the sum of the "Company system maximum" demands of all the parties hereto.

Section 14—The term "Company excess reserve capacity", with respect to any party, in any such month as hereinafter determined shall mean the amount (in kilowatts) by which the "Company reserve capacity" of such party in such month exceeds the product of its "Company system maximum demand" multiplied by the "per cent interconnected reserve capacity" of the interconnected system.

Section 15—The term "Company deficiency in reserve capacity", with respect to any party, in any such month as hereinafter determined shall mean the number of kilowatts by which its "Company generating capacity" is less

than the sum of (1) the product of its "Company system maximum demand" in such month multiplied by the "per cent interconnected reserve capacity" of the interconnected system in such month and (2) its "Company system maximum demand".

Section 16—The term "firm capacity", with respect to any party, when so indicated by the context, shall mean the number of kilowatts of energy which such party has obligated itself to supply or stand ready to supply to any electric public utility company not a signatory hereto in consideration of payment therefor, and which serves to reduce the "Company reserve capacity" of such party available to the interconnected system; and shall also mean, when so indicated by the context, the number of kilowatts purchased by any party hereto from a source not a part of the interconnected system but available for use within such system, when of a quality as described in the definition of "Company generating capacity" hereinabove set forth.

Section 17—The term "half hour" shall mean the thirty-minute period beginning or ending on a clock hour, as for example, between five o'clock and five thirty o'clock or between five thirty o'clock and six o'clock.

Section 18—The term "month" shall mean the billing period.

Section 19—The word "Term", unless otherwise indicated by the context shall include not only the original term of the agreement, but also any and every period of extension effected under the provisions hereof.

Article II—Term—Essence.

Section 1—Term. This agreement will become effective on January 1st, 1938, and will thereafter remain in effect for succeeding terms of one (1) year. It shall continue in effect for successive periods of one year each unless cancelled by six (6) months' notice written by any party to the other parties, prior to the expiration of any term hereof, of its intention not to renew contract.

Section 2—Essence. It is the intent of this agreement that the "percentage of Company reserve capacity" shall

be the same for each of the parties hereto. Any company or companies having a "deficiency or deficiencies in reserve capacities" shall supply such deficiency from the company or companies having "Company excess reserve capacity". Such excess shall be apportioned so that the "percentage of Company reserve capacity" is identical with the percentage of interconnected reserve capacity.

Article III—General Conditions.

Section 1—General Obligations as to Supply. For and during the term hereof each of the parties hereto having "Company interchange capacity" shall supply and/or stand ready to supply capacity to each of the other parties hereto, and any party to whom capacity shall be supplied hereunder shall take and/or pay for capacity in accordance with and subject to the terms and provisions hereinafter set forth.

Section 2—Form of Energy. The capacity and/or energy to be supplied hereunder shall be in the form of three phase alternating current, having a frequency of sixty (60) cycles per second at suitable voltage, or in such other form as in any instance may mutually be agreed upon.

Section 3—Limitation of Use. The capacity and/or energy supplied hereunder to any Receiving Company shall not be used by such Receiving Company within, nor be sold by such Receiving Company to any purchaser for use within the limits of the territory of any of the other Companies, parties hereto, except in each instance by and with the written consent of such other Company.

Section 4—Ownership of Lines. All energy supplied hereunder by any supplying company shall be supplied over lines owned or leased by it, so far as such lines shall be located within its territory, and over lines owned or leased by the Receiving Company to which such energy is delivered, so far as such lines shall be located within the territory of such Receiving Company.

Section 5—Points of Delivery to Be Economically Located. The points of delivery shall be fixed by agreement between the Supplying Company and the Receiving Company in each case, and shall be so located that the neces-

sary transmission lines may be operated at a minimum total cost, and in such manner that the division of cost shall be equitable to all parties concerned as geographical arrangement and physical conditions will permit.

Section 6—Supply to Outside Electric Utilities. Any of the parties hereto may supply energy to an electric utility not a signatory hereto under an interchange or pool agreement subject to the following conditions; (a) the other parties hereto shall be fully informed as to the terms and provisions of any such agreement with an outside utility and no such agreement shall become effective without the consent of the other parties hereto; (b) any firm demand resulting from the provisions of any such outside agreement shall not be included as a part of the Company system maximum demand of the party hereto entering into such an agreement, but shall be deducted from the Company generating capacity of such party; (c) the Operating Committee shall be kept fully informed as to the energy delivered by any party hereto to outside electric utilities whether delivered as emergency or as firm demand energy.

Section 7—Additional Capacity. When, in the opinion of the parties hereto the inter-connected system coincident demand increases to a point that the system in the aggregate does not have adequate reserve facilities to insure reliable service, then, and in such event, the parties hereto will agree on the installation of additional capacity. The location of such additional capacity will be by mutual agreement as to the most feasible and practical location, taking into consideration, all other factors. When such installations are completed, the effective generating capacities of the respective parties hereto will be adjusted accordingly for billing purposes.

No plant improvements, additions or betterments by either party will be considered for billing purposes except as all of the parties hereto have approved such extension, improvement or betterment and mutually agreed on the increase in effective capacity resulting therefrom.

Article IV—Transmission Lines.

Section 1—Each company shall provide sufficient capacity in interchange lines within its own territory to transmit excess reserve capacity to the interconnected system,

but any company may, if it desires, provide such capacity in excess of immediate requirements.

Section 2—It is agreed that the status of existing interchange lines shall remain as of the date hereof until changed by mutual agreement of the parties hereto. As the requirements of service change, the parties may by mutual agreement reinforce, reconstruct, or remove any interchange line.

Section 3—It is further recognized that if one Company has provided capacity between existing points of interchange which is in excess of its own reserve requirements and such excess may be used for the interchange of reserve capacity between the other companies, it shall be entitled to and receive compensation for the use of its transmission facilities from the other Companies employing such excess, either for the actual transmission of power or for standby protection as determined and agreed upon by the Operating Committee.

Section 4—In determining compensation for excess transmission line capacity, such excess as may exist in terminal facilities such as transformers, switches and meters may be included.

Section 5—The capacity and location of any future interchange line shall be as agreed upon by the parties hereto upon recommendation of the Committee of Operations.

Article V—Rating of Generating Stations.

Section 1—The rated capacity (in kilowatts) of any generating station owned, leased, or otherwise controlled by any of the parties hereto, shall be the sum of the manufacturers' name plate ratings of all generating units except those supplying power for station auxiliaries and not available for the supply of energy used elsewhere. In each case the Committee on Operations (provided for hereinafter) shall, however, investigate the entire equipment and shall determine that which in its judgment make equitable a rating other than the sum of the name plate ratings; such rating of all such generating capacity shall, however, be fixed after full investigation and by unani-

mous agreement as hereinafter described of the Committee on Operations after investigation.

Section 2—At any time when there shall have been a change in conditions which seems to warrant a change in rating, the rating previously established for any generating station may be brought up for revision by the Committee on Operations. Generating capacity which is temporarily out of service for repairs or maintenance work shall not be deducted from the rating of the generating station during such temporary outage.

Section 3—The Committee on Operations shall determine at the expiration of each term of this contract, and previous to the beginning of a succeeding term, the "Station generating capacity" and therefrom the "company generating capacity" that shall obtain for the next succeeding term of this contract.

The foregoing shall be set forth in detail and therefrom shall be determined the "interconnected generating capacity" all of which shall be assembled in a memorandum signed by each member of the Committee on Operations, and marked "Exhibit B." The initial and each subsequent memorandum shall state the term of contract to which such exhibit is applicable.

Article VI—Determination of Maximum Demand.

Section 1—The Company system maximum demand of any party hereto shall be determined by the Committee on Operations and shall be ascertained as hereinafter set forth by multiplying by two the net total output in kilowatt hours during the half hour of system maximum demand including, (1) the energy produced by the generating stations of such party, and (2) the energy purchased by such party from all sources, and by deducting from such product (a) twice the number of kilowatt hours of energy supplied hereunder by such party in such half hour to any other party hereto, and (b) twice the number of kilowatt hours of energy supplied by such party in such half hour in any portion of its territory which is not a part of the interconnected system, and (c) twice the number of kilowatt hours of energy supplied by such

party in such half hour to any electric public utility company not a party hereto, when said supply is of an emergency or surplus nature and reported to and approved as such, in each instance, by the Operating Committee. The highest net total thus found for the system of any party in any half hour shall be the company system maximum demand of such party for the month hereinafter designated in which such half hour occurs.

Section 2—The Committee on Operations shall determine at the expiration of each term of this contract and previous to the beginning of a succeeding term thereof the "Company system demands" for each company as defined in Section 8 of Article I hereof and therefrom establish the total of the "Company system demands" for all parties hereto.

The foregoing shall set forth the time and date which such "Company system demands" were ascertained, the items making up such total for each company and the sum total thereof for the "interconnected system." All of this shall be assembled in a memorandum which shall be attached hereto and be marked "Exhibit C."

The contract and each subsequent memorandum so prepared shall be signed by each member of the Committee on Operations and shall state the term of the contract in which such "Company system demands" are to be used for billing purposes.

Article VII—Interchange Capacity.

Section 1—The Committee on Operations shall prepare as a supplement to this contract for its initial term and for each succeeding term thereafter, same to be marked "Exhibit C," a summary of "Company generating capacities" as described in Section 3 of Article V; and likewise a summary of "Company system maximum demands" as described in Section 2 of Article VI hereof.

Therefrom shall be determined the "interconnected generating capacity" the interconnected "system maximum demands," the "interconnected system reserve capacity" and the per cent interconnected system reserve capacity. Likewise thereon shall be set forth the company

or companies having "Company excess reserve capacity" and the company or companies having "Company deficiency in reserve capacity" and the amounts thereof.

This exhibit shall establish the distribution or apportionment of such excess reserve capacity that may exist, as such apportionment shall obtain during the succeeding term of this contract. The summary so prepared shall be signed by each member of the Committee of Operations.

Section 2—Any company or companies having a deficiency of reserve capacity shall be deemed to have established a firm demand hereunder respectively upon the other parties or party hereto having excess reserve capacity for the number of kilowatts constituting such deficiency in reserve capacity as previously defined in Article I, Section 14 hereof.

Section 3—The firm demand for any Receiving Company or Companies shall be determined by the deficiency or deficiencies of reserve capacity as ascertained at the expiration of each term of this contract and previous to the succeeding term unless otherwise mutually agreed upon.

Section 4—The firm demand so established by any Receiving Company or Companies shall obtain for the succeeding term of the contract.

Such Company or Companies shall pay to the Supplying Company or Companies for the total number of kilowatts of firm demand, so deemed to be established (whether actually availed of and used or not) a demand charge at the rate hereinafter specified in Article VIII, Section 1.

Section 5—Unless otherwise mutually agreed, it shall be the duty of such Supplying Company or Companies to maintain its or their capacity in readiness to supply the Receiving Company or Companies capacity up to the amount of its or their respective proportion or proportion of such firm demand.

Article VIII—Demand Charge.

Section 1—Subject to the terms and conditions of this agreement each company will furnish its proportion of the "reserve capacity" required for the interconnected sys-

tem, or in lieu thereof, the company or companies with a deficiency of reserve capacity will pay the other company or companies having an excess reserve capacity a demand charge of $13 and 20 cents per kilowatt of firm demand per year. One twelfth of such firm demand charge shall be due and payable by the Receiving Company or Companies to the Selling Company or Companies at the expiration of each calendar month during the succeeding term of this contract all as herein prescribed.

Section 2—The total firm demand of such Receiving Company or any Companies for the contract term shall be apportioned to each Supplying Company having "Company excess reserve capacity" in the proportion which the number of kilowatts of "Company excess reserve capacity of such Supplying Company" bears to the sum of Company excess reserve capacities of all the Supplying Companies and payments shall be apportioned in like manner.

Article IX—Energy Charges.

Section 1—Charges for the electrical energy flow incidental to the exchange of capacity hereto shall be covered by separate agreements. These agreements shall also cover flow of energy incident to exchange of emergency or surplus capacity.

Article X—Continuity of Service.

Each of the parties hereto will exercise reasonable diligence and care to avoid interruptions in delivery of power hereunder but will not be liable for any damage or loss which may be occasioned by any failure or interruptions caused by fires, strikes, riots, floods, lightning, storms, Acts of God, civil disturbances, action of Public [Authorty] litigation, break-downs or causes beyond reasonable control.

Either of the parties may take equipment out of service to make necessary repairs or to make changes in equipment or to install new equipment or any of these purposes, but only for such time as may be unavoidable.

It is understood and agreed that each of the parties hereto will use reasonable diligence and care in maintaining and operating the effective diligence and care in maintaining and operating the effective generating capacity of their respective systems provided for herein, to the end that they will perpetuate approximately the stated effective capacities.

Article XI—Emergency Power.

In the event of total or partial failure of the facilities for generation or transmission of electric power by either party, the other party or parties agree to use all reasonable effort and all facilities at their command after the requirements of the other customers of the party or parties delivering such power have been met, including any firm power commitments by reason of this Agreement, to furnish power to the receiving party or parties for short periods of time and to the extent of such failure or interruption, but only for such periods of time as may be required to restore such facilities by the exercise of every reasonable effort on the part of the party or parties possessed of such facilities to their normal operating condition.

There will be no billing for such emergency power except that it is mutually agreed that should either of the parties hereto be obliged to incur additional expense in bringing reserve equipment back into service for emergency operation, that such additional expense will be chargeable to the party or parties requiring this abnormal emergency service.

It is the intent that the delivering company will not make a profit on such emergency power, but will be reimbursed only for added expense that such company may incur during such emergency at the request of the party desiring the power.

No service charge however, will be made for such emergency service unless due notice has been given by the party in need of emergency power to the other party or parties and the other party has agreed to the charge.

Article XII—Liability.

Each party hereto will save and keep the other harmless from any and all loss, cost, damage or expense, or including attorney fees for, or by reason of, any claim for injury to its own employees at any location, and to persons or property occasioned by the electric power or equipment owned or operated by it however caused. Neither party hereto assumes any responsibility for the equipment of the other party.

Article XIII—Bills and Payment.

In the event of billing hereunder such bills will be rendered each month as nearly as practical on or before the 5th day of the succeeding calendar month and will be payable within ten days from date thereon.

If either party fails to perform any of its obligations under this contract, including prompt payment of monthly bills, the other party may suspend delivery of power hereunder and will not be liable in any manner for loss or damage arising from such suspension. No such suspension will interfere with the enforcement by the parties hereto of any other legal right or remedy or relieve the delinquent company from liability to pay the demand charges during any such suspension. No delay by the parties hereto in enforcing any of their rights hereunder will be deemed as a waiver of such rights.

Article XIV—Metering.

Suitable standard metering equipment agreeable to all parties will be installed, owned and maintained by the respective parties hereto at the point of inter-connection. Meters will be of such number, type and arrangement as will show separately the demand at such point of interconnection.

Metering equipment will be tested at intervals not exceeding six months with a representative of each party present. If, as a result of such test, the metering equipment is found to be inaccurate, it shall be restored to as near as possible, a condition of one hundred per cent accuracy. Adjustments for such charges during such periods as the equipment was known to be inaccurate, or

during such periods as was known that the metering equipment was entirely out of commission, will be made by mutual agreement based on the last billing when the equipment was in normal operating condition and adjusted for seasonal variations.

Article XV—Conclusion.

This Contract will inure to and be binding upon the parties hereto, their successors and assigns.

In Witness Whereof, the parties hereto have caused this Contract to be executed by these duly authorized officers and impressed with their respective corporate seals the date and year first above written.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By A. B. SANBORN,
President.

Attest:
J. F. BUCKMIER,
Secretary.

NORTH DAKOTA POWER & LIGHT COMPANY,

By C. L. SANDSTEDT,
Vice-President.

Attest:
J. F. BUCKMIER,
Secretary.

NORTHERN POWER & LIGHT COMPANY,

By G. R. McARTHUR,
Vice-President.

Attest:
J. F. BUCKMIER,
Secretary.

Exhibit A (Page 59) is shown on Card 11.

Exhibit "D"

Northwestern Public Service Company
Rate Schedule FPC No. 5-A
Effective date: July 1, 1939
Filing date: January 10, 1940
(Cancels Rate Schedule FPC No. 3)

Interconnection Contract

Northwestern Public Service Company

Dakota Public Service Company

This Contract and Agreement, Made and entered into this 1st day of July, 1939 by and between Northwestern Public Service Company, a Delaware corporation, hereinafter referred to as "Northwestern Company" and Dakota Public Service Company, a Delaware corporation, hereinafter referred to as "Dakota Company".

Witnesseth:

Whereas, both companies desire to interchange electric power and energy in order to utilize existing power plants to their maximum capacity and to provide emergency service, one to the other, and,

Whereas, Northwestern Company has heretofore, at its own cost and expense, constructed interconnection facilities with the transmission system of Dakota Company, which facilities are more specifically described as follows:

Item 1. Portion of Aberdeen's interconnected substation and control equipment used exclusively for interconnection with Dakota Company.

Item 2. Gettysburg substation used exclusively for interconnection with Dakota Company and serving Gettysburg, a Dakota Company property.

Item 3. Twenty-two/thirty-eight kilovolt transmission lines from Aberdeen to Barnard and from Aberdeen to Ipswich, totaling fifty (50) miles for interconnection with Dakota Company.

Item 4. Thirty-three kilovolt transmission line from Highmore to Gettysburg, a distance of sixty-two (62)

miles for interconnection at Gettysburg with Dakota Company, and

Whereas, the interconnection facilities above listed make possible the interchange of energy between the respective companies, thereby enabling both companies to render more reliable service and utilize existing plants to their maximum efficiency.

Now, Therefore, the parties hereto agree as follows, to-wit:

Article I.

Definition of Terms.

For the purpose of this Agreement, certain terms herein used are defined as follows:

The term, "points of delivery", means the various points where the transmission lines of Northwestern Company meet the transmission lines of Dakota Company.

The term, "firm power", means that power which either company is obligated to furnish the other and for which the receiving company would be obligated to pay.

The term "surplus energy", means that energy which either company may, in its judgment, have available from time to time and desires to sell to the other company and which energy the other company desires to receive.

The term "emergency power" means that power which either company, upon receiving due notice from the other company, can and does furnish the other company for a short period of time during an emergency caused by the failure or break-down of any of the facilities of the other party.

The term "billing period", means that period between successive meter readings taken for the purpose of power and energy billing which reading will be taken as nearly as practicable on the 25th day of each current month.

Article II.

Term of Contract.

This Contract will become effective on July 1, 1939, and will continue thereafter for a period of eighteen (18) months. It will thereafter remain in effect until canceled by eighteen (18) months' written notice by either party.

It is understood that such notice may be given on any date for termination of the contract in eighteen (18) months' from date of notice.

Article III.

General Agreement.

Subject to the terms and conditions of this Agreement, each company will sell surplus energy to the other, and each company will furnish, one to the other, such emergency power as one company may need and the other company have available during such emergency. Neither company hereunder obligates itself to furnish or receive any firm power.

Article IV.

Voltage and Frequency.

Power and energy to be delivered or interchanged hereunder will be of a character commonly known as three phase, alternating current at approximately 60 cycles and at approximately 33 kilovolts and 22,000/38,000 volts respectively.

Article V.

Rate.

Northwestern Company will pay to Dakota Company for surplus energy during each billing period a sum equivalent to .5 cents per kilowatt-hour.

Dakota Company will pay to Northwestern Company for surplus energy during each billing period a sum equivalent to .5 cents per kilowatt-hour.

It is understood between the parties hereto that fuel prices and generating efficiencies may change, causing the

desirability of an adjustment in the energy rates contained in this Article. In January of each year the parties hereto will review production costs and if necessary re-determine the energy rates to be contained herein. Such revision, if any, will be made by supplements to this Contract.

It is understood that billing under the rates contained herein will become effective July 1, 1939. The first review will then be made in January, 1940, and each January thereafter.

Article VI.

Transmission Line Charges.

As Dakota Company's share of the fixed charges, maintenance and operating expenses relating to the interconnection facilities enumerated above, Dakota Company agrees to pay Northwestern Company, beginning July 1, 1939, the sum of $1,666.66 a month. This charge is over and above all energy charges provided under Article V above.

Upon the termination of this Contract by either party, Dakota Company will pay Northwestern Company, in addition to all other charges hereinbefore enumerated a sum equivalent to one-half the actual cost to Northwestern Company to remove and dismantle the interconnection facilities enumerated above and to return all material to the storeroom of Northwestern Company in Aberdeen, South Dakota.

Dakota Company has no obligation to pay Northwestern Company for any part of the construction cost of the interconnection facilities enumerated above or for the use of such facilities for any period prior to January 1, 1936.

Article VII.

Emergency Power.

In the event of total or partial failure of the facilities for generation or transmission of electric power of either party, the other party agrees to use all reasonable effort and all facilities at its command (after the requirements of the other customers of the party delivering such power

have been met) to furnish power and energy to the receiving party for short periods of time and to the extent of such failure or interruption and only for such period of time as may be required to restore such facilities, by the exercise of every reasonable effort on the part of the party possessed of such facilities, to their normal operating condition.

Billing for such emergency power and energy will be on the basis of the energy charge as provided in Article V above, plus whatever additional expense the delivering party may incur in placing in operation and operating high priced plants and facilities. It is the intent that the delivering company will not make a profit on such emergency power but will be reimbursed for all added expense that such party may incur during such emergency.

No service will be emergency service, however, unless due notice has been given by the party in need of emergency power to the other party and the other party agrees to furnish such emergency power.

Article VIII.

Metering.

Suitable standard 33 kilovolt and/or 22,000/38,000 volt metering equipment agreeable to both parties will be installed, owned and maintained by Northwestern Company at the points of delivery (or as near thereto as practicable). Meters will be of such number, type and arrangement, as will show separately the amounts of power and energy supplied at each location. Metering equipment will be tested at intervals not exceeding sixty (60) days with a representative of each party present. If, as the result of such tests, the metering equipment is found to be inaccurate, it will be restored to a condition of accuracy. If inaccuracy exceeds 2%, the readings of the meters taken during the period (30) days preceding (or during such shorter period as may have intervened since a periodic test) will be corrected and payments adjusted accordingly, prior to which period no correction of such readings will be made.

Dakota Company may at its own expense install and maintain additional metering equipment at the point of delivery for the purpose of checking the meters installed and maintained by Northwestern Company, and the readings thereof.

If the meters installed by Northwestern Company wholly fail to register the power and energy during any period of time for any reason whatsoever, the amount of power and energy delivered during such period will be measured by means of the meters installed by the Dakota Company, and if the Dakota Company has not installed meters, or if its meters have wholly failed to register during this period of time, the amounts of power or energy so delivered will be estimated according to the amounts previously delivered under substantially similar conditions.

Article IX.

Continuity of Service.

Both companies will exercise reasonable diligence and care to avoid interruptions of delivery of power and energy hereunder but will not be liable for any damage or loss that may be occasioned by any failure or interruptions caused by fire, strikes, riots, floods, lightning, storms, Acts of God, civil disturbances, actions of public authority, litigation, break-down, or causes beyond its reasonable control. Either company may interrupt service to make necessary repairs or to make changes in equipment or to install new equipment but only for such time as may be unavoidable. Reasonable advance notice of such interruption will be given if the nature of the situation permits.

Article X.

Liability Clause.

Each party hereto will save and keep the other harmless from any and all loss, cost, damage or expense, including reasonable attorneys' fees, for or by reason of, any claim for injury to its own employees at any location and to other persons or property occasioned by the electric power and energy or equipment on its own side of the

points of delivery hereunder, however caused, provided however, that each party will be liable for any damage to persons or property arising out of the maintenance and/or operation of transmission lines it may own beyond the points of delivery herein defined.

Article XI.

Bills and Payments.

Bills for power and energy delivered hereunder will be rendered *each month* as nearly as may be practicable on or before the fifth (5th) day of the calendar month, and will be payable within ten (10) days from the date thereof.

If either company fails to perform any of its obligations under this contract including the prompt payment of monthly bills, the other company may suspend delivery of power and energy and will not be liable in any manner for loss or damage arising from such suspension. No such suspension will interfere with the enforcement by the other company of any other legal right or remedy or relieve the delinquent company from liability to pay the transmission line charges during any such suspension. No delay by either company in enforcing any of its rights hereunder will be deemed a waiver of such rights.

Article XII.

Conclusion.

This Contract will inure to, and be binding upon the successors and assigns of the respective parties.

It is understood that this Agreement cancels and supersedes the Interconnection Contract dated October 7, 1936, between Northwestern Public Service Company and Northern Power and Light Company, and is made for the purpose of confirming an agreement of merger dated January 28, 1939 and effective July 1, 1939, whereby Northern Power and Light Company became merged into North Dakota Power & Light Company as the surviving corporation under the corporate title of "Dakota Public Service Company."

In Witness Whereof, the parties hereto have caused this Contract to be executed by their duly authorized officers, and impressed with their respective corporate seals the date and year first above written.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By A. B. SANBORN,
President.

(Corporate Seal)

Attest:
J. F. BUCKMIER,
Secretary.

DAKOTA PUBLIC SERVICE COMPANY,

By C. L. SANDSTEDT,
Vice-President.

(Corporate Seal)

Attest:
J. F. BUCKMIER,
Secretary.

Exhibit "E."

Northwestern Public Service Company
Rate Schedule FPC No. 5-B
Effective date: July 1, 1939
Filing date: January 10, 1940
(Cancels Rate Schedule FPC No. 4)

Interchange Capacity Agreement.

Northwestern Public Service Company..."Northwestern"

Dakota Public Service Company....."Dakota"

This Agreement made and entered into this 1st day of July, 1939, by and between Northwestern Public Service Company, a corporation organized under the laws of Dela-

ware, hereinafter referred to as "Northwestern", and Dakota Public Service Company, likewise organized under the laws of Delaware, hereinafter referred to as "Dakota".

Witnesseth:

Whereas, "Northwestern" is engaged in the business of producing and selling electrical energy within the geographical area of the eastern half of the State of South Dakota, such territorial limits as they exist at the date hereof being so designated and shown on the plat attached hereto, marked Exhibit "A", and hereby made a part hereof; and

Whereas, "Dakota" is engaged in the business of producing and selling electrical energy within the geographical area located in the southern half of North Dakota and the north Central part of South Dakota, such territorial limits as they exist at the date hereof being so designated and shown on the plat attached hereto marked Exhibit "A" and hereby made a part hereof.

Whereas, "Northwestern" and "Dakota" have provided the interconnection facilities and the basis for the transfer of energy all as provided for in the interconnection agreement dated July 1, 1939 and by reference made a part hereof, and

Whereas, the transmission systems of the said companies are now interconnected as shown on the plat attached marked Exhibit "A", and such systems are now operated as an interconnected system, and

Whereas, it is the desire of the two companies to make full and mutual use of the interconnection of their respective transmission systems for the interchange of reserve or spare capacity in their combined systems as such reserve or spare capacity may obtain in their respective generating stations and may from time to time be available; it being recognized that economy of supply is to be realized by both companies when either of them is entitled to draw upon the reserve or spare capacity of the other, whether for use in the Receiving Company's (as hereinafter defined), general light and power busi-

ness or for the purpose of securing to the Receiving Company a reserve capacity during emergencies or during the overhauling of equipment or whenever other need may arise; and it being futher recognized that it is to the interest not only of the companies themselves but of the public, that their respective systems shall be developed with such proper harmonious co-operation as will tend to prevent avoidable expenditures and thereby tend to minimize the cost of producing and supplying electrical energy; and it being further recognized that if two neighboring supply companies are adequately interconnected it is not necessary for either of them to own and maintain as large an amount of reserve or spare capacity as though each company was separate and isolated from the other; and

Whereas, it is now the desire of each of the parties hereto that under and pursuant to the agreement such as this is intended to be, a flexible and equitable basis be established for the apportionment of charges covering the interchange or use of said reserve or spare generating capacity as may now or hereafter obtain either incident to the actual exchange of such capacity or its employment for stand-by purposes all in order that the two companies may be operated at the highest efficiency and the lowest practical cost, and

Now, Therefore, in consideration of the premises of One Dollar and other good and valuable considerations in hand paid by each of the parties to the other, the receipt of which payment is hereby by each of the parties confessed, and in consideration of the mutual covenants and conditions hereinafter set forth, and of the benefits expected to be derived herefrom the parties hereby agree as follows:

Article I—Definitions.

Section 1—The term "Supplying Company", as used in this agreement, shall, so far as appropriate, designate and apply to either party hereto which, under the terms hereof, for the time being, shall be obligated to stand ready to supply electrical capacity and/or energy to the other party, or from which capacity and/or energy for the time

being shall be desired hereunder by the other of said parties.

Section 2—The term "Receiving Company" shall, so far as appropriate, designate and apply to either party hereto which, under the terms hereof, for the time being, shall be entitled to obtain or be obtaining or be desirous of obtaining, capacity from the other party.

Section 3—The term "point of delivery" shall mean any point (to be, in each case, however, a point on the boundary line between the respective territories of the parties hereto, unless otherwise agreed) at which, under the terms hereof, the respective transmission lines of either party shall join, and at which capacity and energy shall be delivered hereunder by either party hereto to the other party hereto. Said "points" of delivery are shown on the attached plat marked Exhibit "A".

Section 4—The term "interconnected system" shall mean the combined system of generating station and interconnecting transmission lines of both parties hereto, all or some part of the capacity of which is available for the transfer of energy from the system of one company to that of the other.

Section 5—The term "station generating capacity" with respect to any generating station owned, leased, or otherwise controlled by either of the parties hereto, shall mean the rated capacity in kilowatts of such station, or the number of kilowatts of electrical energy such station can supply to the interconnected system, whichever is lower.

Section 6—The term "Company generating capacity", with respect to either party hereto, in any month as may be hereinafter designated shall mean the sum total capacity in kilowatts of (1) all the several station generating capacities, as above defined of such party, in such month, and (2) the amount of firm capacity (as hereinafter defined) now or hereafter purchased in each month, by such party, when such firm capacity is of the same general character with relation to such party's operation as an equal amount of steam turbine or internal combustion engine driven generating capacity owned or leased by such party.

Section 7—The term "Interconnected generating capacity", shall mean the sum of the Company generating capacities, as above defined, of both parties hereto.

Section 8—The term "Company system maximum demand", with respect to either party, for such month as hereinafter designated shall mean the demand (in kilowatts) made upon the system of such party during that half hour in such month in which demand was greater than in any half hour previously recorded.

Section 9—The term "interconnected system maximum demand" with respect to either party, for such month as hereinafter designated shall mean the arithmetical sum of Company system maximum demand during that half hour in such month in which such combined demand was greater than in any other half hour.

Section 10—The term "Company reserve capacity" with respect to either party in any given month, shall mean the excess (in kilowatts) of the Company generating capacity of such party, over and above the highest previous recorded Company system maximum demand (in kilowatts) of such party during the term hereof.

Section 11—The term "per cent Company reserve capacity" with respect to either party, at any given time shall mean the percentage which the Company reserve capacity of such party (as defined in the last preceding paragraph) at such time bears to the Company system maximum demand of such party.

Section 12—The term "interconnected system reserve capacity", shall mean the net total of the Company reserve capacities, as hereinbefore defined (after deducting any deficiency in Company generating capacity of either party) of both parties hereto.

Section 13—The term "per cent interconnected system reserve capacity" shall pertain to the interconnected system and, at any given time, shall mean the percentage which the "interconnected reserve capacity" then bears to the sum of the "Company system maximum demands" of both parties hereto.

Section 14—The term "Company excess reserve capacity", with respect to either party, in any such month as hereinafter determined shall mean the amount (in kilowatts) by which the "Company reserve capacity" of such party in such month exceeds the product of its "Company system maximum demand" multiplied by the "per cent interconnected reserve capacity" of the interconnected system.

Section 15—The term "Company deficiency in reserve capacity", with respect to either party, in any such month as hereinafter determined shall mean the number of kilowatts by which its "Company generating capacity" is less than the sum of (1) the product of its "Company system maximum demand" in such month multiplied by the "per-cent interconnected reserve capacity" of the interconnected system in such month and (2) its "Company system maximum demand".

Section 16—The term "firm capacity", with respect to either party, when so indicated by the context, shall mean the number of kilowatts of energy which such party has obligated itself to supply or stand ready to supply to any electric public utility company not a signatory hereto in consideration of payment therefor, and which serves to reduce the "Company reserve capacity" of such party available to the interconnected system; and shall also mean, when so indicated by the context, the number of kilowatts purchased by either party hereto from a source not a part of the interconnected system but available for use within such system, when of a quality as described in the definition of "Company generating capacity" hereinabove set forth.

Section 17—The term "half hour" shall mean the thirty-minute period beginning or ending on a clock hour, as, for example, between five o'clock and five thirty o'clock or between five thirty o'clock and six o'clock.

Section 18—The term "month" shall mean the billing period.

Section 19—The word "term", unless otherwise indicated by the context shall include not only the original

term of the agreement, but also any and every period of extension effected under the provisions hereof.

Article II—Term—Essence.

Section 1—Term. This agreement will become effective on July 1, 1939, and will thereafter remain in effect for succeeding terms of one (1) year. It shall continue in effect for successive periods of one year each unless cancelled by six (6) months' notice written by either party to the other party, prior to the expiration of any term hereof, of its intention not to renew contracts.

Section 2—Essence. It is the intent of this agreement that the "percentage of Company reserve capacity" shall be the same for either of the parties hereto, either party having a "deficiency in reserve capacities" shall purchase such deficiency from the party having "Company excess reserve capacity", such excess shall be apportioned so that the "percentage of Company reserve capacity" is identical with the percentage of interconnected reserve capacity.

Article III—General Conditions.

Section 1—General Obligations as to Supply. For and during the term hereof either of the parties hereto having "Company interchange capacity" shall supply and/or stand ready to supply capacity to the other party hereto, and either party to whom capacity shall be supplied hereunder shall take and/or pay for capacity in accordance with and subject to the terms and provisions hereinafter set forth.

Section 2—Form of Energy. The capacity and/or energy to be supplied hereunder shall be in the form of three phase alternating current, having a frequency of sixty (60) cycles per second at suitable voltage, or in such other form as in any instance may mutually be agreed upon.

Section 3—Limitation of Use. The capacity and/or energy supplied hereunder to the Receiving Company shall not be used by such Receiving Company within, nor be sold

by such Receiving Company to any purchaser for use within the limits of the territory of the other party hereto, except in each instance by and with the written consent of the other party.

Section 4—Ownership of Lines. All energy supplied hereunder by either company shall be supplied over lines owned or leased by it, so far as such lines shall be located within its territory, and over lines owned or leased by the Receiving Company to which such energy is delivered, so far as such lines shall be located within the territory of such Receiving Company.

Section 5—Points of Delivery to Be Economically Located. The points of delivery shall be fixed by agreement between the parties hereto and shall be so located that the necessary transmission lines may be operated at a minimum total cost, and in such manner that the division of cost shall be equitable to both parties concerned as geographical arrangement and physical condition will permit.

Section 6—Supply to Outside Electric Utilities. Either party hereto may supply energy to an electric utility not a signatory hereto under an interchange or pool agreement subject to the following conditions; (a) the other party hereto shall be fully informed as to the terms and provisions of any such agreement with an outside utility and no such agreement shall become effective without the consent of the other party hereto; (b) any firm demand resulting from the provisions of any such outside agreement shall not be included as a part of the Company system maximum demand of the party hereto entering into such an agreement, but shall be deducted from the Company generating capacity of such party; (c) the Operating Committee shall be kept fully informed as to the energy delivered by either party hereto to outside electric utilities, whether delivered as emergency or as firm demand energy.

Section 7—Additional Capacity. When, in the opinion of the parties hereto the interconnected system coincident demand increases to a point that the system in the aggregate does not have adequate reserve facilities to insure re-

liable service, then, and in such event, the parties hereto will agree on the installation of additional capacity. The location of such additional capacity will be by mutual agreement as to the most feasible and practical location, taking into consideration, all other factors when such installations are completed, the effective generating capacities of the respective parties hereto will be adjusted accordingly for billing purposes.

No plant improvements, additions or betterments by either party will be considered for billing purposes except as both of the parties hereto have approved such extension, improvement or betterment and mutually agreed on the increase in effective capacity resulting therefrom.

Article IV—Transmission Lines.

Section 1—Each company shall provide sufficient capacity in interchange lines within its own territory to transmit excess reserve capacity to the interconnected system but either company may, if it desires, provide such capacity in excess of immediate requirements.

Section 2—It is agreed that the status of existing interchange lines shall remain as of the date hereof until changed by mutual agreement of the parties hereto. As the requirements of service change, the parties may by mutual agreement reinforce, reconstruct or remove any interchange line.

Section 3—It is further recognized that if one company has provided capacity between existing points of interchange which is in excess of its own reserve requirements and such excess may be used for the interchange of reserve capacity between the parties hereto, it shall be entitled to and receive compensation for the use of its transmission facilities from the other party employing such excess, either for the actual transmission of power or for stand-by protection as determined and agreed upon by the Operating Committee.

Section 4—In determining compensation for excess transmission line capacity, such excess as may exist in terminal

facilities such as transformers, switches and meters may be included.

Section 5—The capacity and location of any future interchange line shall be as agreed upon by the parties hereto upon recommendation of the Committee of Operations.

Article V—Rating of Generating Stations.

Section 1—The rated capacity (in kilowatts) of any generating station owned, leased, or otherwise controlled by either party hereto, shall be the sum of the manufacturers' name plate ratings of all generating units except those supplying power for station auxiliaries and not available for the supply of energy used elsewhere. In each case the Committee on Operations (provided for hereinafter) shall, however, investigate the entire equipment and shall determine that which in its judgment makes equitable a rating other than the sum of the name plate ratings; such rating of all such generating capacity shall, however, be fixed after full investigation and by unanimous agreement as hereinafter described of the Committee on Operations after investigation.

Section 2—At any time when there shall have been a change in conditions which seems to warrant a change in rating, the rating previously established for any generating station may be brought up for revision by the Committee on Operations. Generating capacity which is temporarily out of service for repairs or maintenance work shall not be deducted from the rating of the generating station during such temporary outage.

Section 3—The Committee on Operations shall determine at the expiration of each term of this contract, and previous to the beginning of a succeeding term, the "station generating capacity" and therefrom the "Company generating capacity" that shall obtain for the next succeeding term of this contract.

The foregoing shall be set forth in detail and therefrom shall be determined the "interconnected generating capac-

ity" all of which shall be assembled in a memorandum signed by each member of the Committee on Operations, and marked "Exhibit B". The initial and each subsequent memorandum shall state the term of contract to which such exhibit is applicable.

Article VI—Determination of Maximum Demand.

Section 1—The Company system maximum demand of either party hereto shall be determined by the Committee on Operations and shall be ascertained as hereinafter set forth by multiplying by two the net total output in kilowatt hours during the half hour of system maximum demand including (1) the energy produced by the generating stations of such party, and (2) the energy purchased by such party from all sources, and by deducting from such product (a) twice the number of kilowatt hours of energy supplied hereunder by such party in such half hour to the other party hereto, and (b) twice the number of kilowatt hours of energy supplied by such party in such half hour in any portion of its territory which is not a part of the interconnected system, and (c) twice the number of kilowatt hours of energy supplied by such party in such half hour to any electric public utility not a party hereto, when said supply is of an emergency or surplus nature and reported to and approved as such, in each instance, by the Operating Committee. The highest net total thus found for the system of either party in any half hour shall be the Company system maximum demand of such party for the month hereinafter designated in which such half hour occurs.

Section 2—The Committee on Operations shall determine at the expiration of each term of this contract and previous to the beginning of a succeeding term thereof the "Company system demands" for each company as defined in Section 8 of Article I hereof and therefrom establish the total of the "Company system demand" for both parties hereto.

The foregoing shall set forth the time and date which such "Company system demands" were ascertained, the items making up such total for each company and the sum

total thereof for the "interconnected system." All of this shall be assembled in a memorandum which shall be attached hereto and be marked "Exhibit C".

The contract and each subsequent memorandum so prepared shall be signed by each member of the Committee on Operations and shall state the term of the contract in which such "Company system demands" are to be used for billing purposes.

Article VII—Interchange Capacity.

Section 1—The Committee on Operations shall prepare as a supplement to this contract for its initial term and for each succeeding term thereafter, same to be marked "Exhibit D", a summary of "Company generating capacities" as described in Section 3 of Article V; and likewise a summary of "Company system maximum demands" as described in Section 2 of Article VI hereof.

Therefrom shall be determined the "interconnected generating capacity", the interconnected "system maximum demands", the "interconnected system reserve capacity" and the per cent interconnected system reserve capacity. Likewise thereon shall be set forth the company having "Company excess reserve capacity" and the company having "Company deficiency in reserve capacity" and the amounts thereof.

This exhibit shall establish the distribution or apportionment of such excess reserve capacity that may exist, as such apportionment shall obtain during the succeeding term of this contract. The summary so prepared shall be signed by each member of the Committee on Operations.

Section 2—Either company having a deficiency of reserve capacity shall be deemed to have established a firm demand hereunder respectively upon the other party hereto having excess reserve capacity for the number of kilowatts constituting such deficiency in reserve capacity as previously defined in Article I, Section 14, hereof.

Section 3—The firm demand for the Receiving Company shall be determined by the deficiency of reserve capacity

as ascertained at the expiration of each term of this contract and previous to the succeeding term unless otherwise mutually agreed upon.

Section 4—The firm demand so established by any Receiving Company shall obtain for the succeeding terms of the contract.

Such company shall pay to the Supplying Company for the total number of kilowatts of firm demand, so deemed to be established (whether actually availed of and used or not) a demand charge at the rate hereinafter specified in Article VIII, Section 1.

Section 5—Unless otherwise mutually agreed, it shall be the duty of such Supplying Company to maintain its capacity in readiness to supply the Receiving Company capacity up to the amount of its respective proportion of such firm demand.

Article VIII—Demand Charge.

Section 1—Subject to the terms and conditions of this agreement each company will furnish its proportion of the "reserve capacity" required for the interconnected system, or in lieu thereof, the company with a deficiency of reserve capacity will pay the other company having an excess reserve capacity a demand charge of $13 and 20 cents per kilowatt of firm demand per year. One twelfth of such firm demand charge shall be due and payable by the Receiving Company to the Selling Company at the expiration of each calendar month during the succeeding term of this contract all as herein prescribed.

Article IX—Energy Charges.

Section 1—Charges for the electrical energy flow incidental to the exchange of capacity hereto shall be covered by separate agreements. These agreements shall also cover the flow of energy incident to exchange of emergency or surplus capacity.

Article X—Continuity of Service.

Each of the parties hereto will exercise reasonable diligence and care to avoid interruptions in delivery of power hereunder but will not be liable for any damage or loss which may be occasioned by any failure or interruptions caused by fires, strikes, riots, floods, lightning, storms, Acts of God, civil disturbances, action of Public Authority, litigation, break-downs, or causes beyond reasonable control.

Either of the parties may take equipment out of service to make necessary repairs or to make changes in equipment or to install new equipment or any of these purposes, but only for such time as may be unavoidable.

It is understood and agreed that each of the parties hereto will use reasonable diligence and care in maintaining and operating the effective generating capacity of its respective system provided for herein, to the end that it will perpetuate approximately the stated effective capacity.

Article XI—Emergency Power.

In the event of total or partial failure of the facilities for generation or transmission of electric power by either party, the other party agrees to use all reasonable effort and all facilities at its command after the requirements of the other customers of the party delivering such power have been met, including any firm power commitments by reason of this Agreement, to furnish power to the receiving party for short periods of time and to the extent of such failure or interruption, but only for such periods of time as may be required to restore such facilities by the exercise of every reasonable effort on the part of the party possessed of such facilities to its normal operating condition.

There will be no billing for such emergency power except that it is mutually agreed that should either of the parties hereto be obliged to incur additional expense in

bringing reserve equipment back into service for emergency operation, that such additional expense will be chargeable to the party requiring this abnormal emergency service.

It is the intent that the delivering company will not make a profit on such emergency power, but will be reimbursed only for added expenses that such company may incur during such emergency at the request of the party desiring the power.

No service charge however, will be made for such emergency service unless due notice has been given by the party in need of emergency power to the other party and the other party has agreed to the charge.

Article XII—Liability.

Each party hereto will save and keep the other harmless from any and all loss, cost, damage or expense, or including attorney fees for, or by reason of, any claim for injury to its own employees at any location, and to persons or property occasioned by the electric power or equipment owned or operated by it however caused. Neither party hereto, assumes any responsibility for the equipment of the other party.

Article XIII—Bills and Payment.

In the event of billing hereunder such bills will be rendered each month as nearly as practical on or before the 5th day of the succeeding calendar month and will be payable within ten days from the date thereon.

If either party fails to perform any of its obligations under this contract, including prompt payment of monthly bills, the other party may suspend delivery of power hereunder and will not be liable in any manner for loss or damage arising from such suspension. No such suspension will interfere with the enforcement by the parties hereto of any other legal right or remedy or relieve the delinquent company from liability to pay the demand charges

during any such suspension. No delay by the parties hereto in enforcing any of their rights hereunder will be deemed as a waiver of such rights.

Article XIV—Metering.

Suitable standard metering equipment agreeable to all parties will be installed, owned and maintained by the respective parties hereto at the point of interconnection. Meters will be of such number, type and arrangement as will show separately the demand at such point of interconnection.

Metering equipment will be tested at intervals not exceeding six months with a representative of each party present. If, as a result of such test, the metering equipment is found to be inaccurate, it shall be restored to as near as possible, a condition of one hundred per cent accuracy. Adjustments for such charges during such periods as the equipment was known to be inaccurate, or during such periods as was known that the metering equipment was entirely out of commission, will be made by mutual agreement based on the last billing when the equipment was in normal operating condition and adjusted for seasonal variations.

Article XV—Conclusion.

This contract will inure to and be binding upon the parties hereto, their successors and assigns.

It is understood and agreed that this agreement cancels and supersedes the Interchange Capacity Agreement dated January 1, 1938 between Northwestern Public Service Company, North Dakota Power & Light Company and Northern Power and Light Company, and is made for the purpose of confirming an agreement of merger dated January 28, 1939 and effective July 1, 1939, whereby Northern Power and Light Company became merged into North Dakota Power & Light Company as the surviving corporation under the corporate title of "Dakota Public Service Company."

In Witness Whereof, the parties hereto have caused this Contract to be executed by their duly authorized officers and impressed with their respective corporate seals the date and year first above written.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By A. B. SANBORN,
President.

(Corporate seal)

Attest:

J. F. BUCKMIER,
Secretary

DAKOTA PUBLIC SERVICE COMPANY,

By C. L. SANDSTEDT,
Vice President.

(Corporate seal)

Attest:

J. F. BUCKMIER,
Secretary

Exhibit A (Page 85) is shown on Card 11

Exhibit "F."

Northwestern Public Service Company
Rate Schedule FPC—No. 6
Effective date, July 1, 1941.
Filing date: February 28, 1942

(Supercedes FPC No. 5A and 5B)

(Federal Power Commission
Feb. 5, 1942 Received)

Northwestern Public Service Company—

Dakota Public Service Company—"Dakota"

Official Filing Date 2/28/42. See Company's letter of 2/24/42.

This Agreement made and entered into this 1st day of July, 1941, by and between Northwestern Public Service Company, a corporation organized under the laws of Delaware, hereinafter referred to as "Northwestern," and Dakota Public Service Company, likewise organized under the laws of Delaware, hereinafter referred to as "Dakota."

Witnesseth:

Whereas, "Northwestern" is engaged in the business of producing and selling electrical energy within the geographical area of the eastern half of the State of South Dakota, such territorial limits as they exist at the date hereof being so designated and shown on the plat attached hereto, marked "Exhibit A", and hereby made a part hereof; and

Whereas, "Dakota" is engaged in the business of producing and selling electrical energy within the geographical area located in the southern half of North Dakota and the north central part of South Dakota, such territorial limits as they exist at the date hereof being so designated and shown on the plat attached hereto marked "Exhibit A" and hereby made a part hereof.

Whereas, both companies desire to interchange electric energy in order to utilize existing power plants to their maximum capacity and to provide emergency service, one to the other, and,

Whereas, "Northwestern" has heretofore constructed at its own sole expense, and hereby agrees to own, maintain, repair and renew during the term of this contract certain interconnection facilities with the transmission system of "Dakota" which facilities are more specifically described as follows:

Item 1. A certain portion of Aberdeen's interconnected substation and control equipment used exclusively for interconnection with "Dakota" located within the corporate limits of the city of Aberdeen, South Dakota.

Item 2. A certain Gettysburg substation, located at Gettysburg, South Dakota, used exclusively for interconnection with "Dakota" and serving Gettysburg, a Dakota property.

(Received Feb. 6-1942
Division of Rates)

Item 3. Certain twenty-two/thirty-eight kilovolt transmission lines from Aberdeen, South Dakota to Barnard, South Dakota and from Aberdeen, South Dakota to Ipswich, South Dakota, totaling fifty (50) miles more or less for interconnection with "Dakota."

Item 4. A certain thirty-three kilovolt transmission line from Highmore, South Dakota to Gettysburg, South Dakota, a distance of sixty-two (62) miles more or less for interconnection at Gettysburg with "Dakota" and,

Whereas, the transmission systems of the said companies are now interconnected as shown on the plat attached hereto marked "Exhibit A", and made a part hereof and such systems are now operated as an interconnected system, and

Whereas, it is the desire of the two companies to interchange electric energy in order to utilize existing power

plants to their maximum capacity and to make full and substantial use of the interconnection of their respective transmission systems for the interchange of electrical energy and/or reserve and/or spare capacity in their combined systems as such reserve or spare capacity may obtain in their respective generating stations and may from time to time be available; it being recognized that economy of supply is to be realized by both companies when either of them is entitled to draw upon the reserve or spare capacity of the other, whether for use in general light and power business or for the purpose of having available such reserve capacity during emergencies or during the overhauling of equipment or whenever other need may arise; it being further recognized that it is to the interest not only of the companies themselves but of the public, that their respective systems shall be developed with such proper harmonious cooperation as will tend to prevent avoidable expenditures and thereby tend to minimize the cost of producing and supplying electrical energy; and it being further recognized that if two neighboring supply companies are adequately interconnected it is not necessary for either of them to own and maintain as large an amount of reserve or spare capacity as though each company was separate and isolated from the other; and

Whereas, it is now the desire of each of the parties hereto that under and pursuant to the agreement such as this is intended to be, a flexible and equitable basis be established for the apportionment of charges covering the interchange or use of said reserve or spare generating capacity as may now or hereafter obtain either incident to the actual exchange of such capacity or its employment for stand-by purposes all in order that the two companies may be operated at the highest efficiency and the lowest practicable cost.

Now, therefore, in consideration of the premises of One Dollar and other good and valuable considerations in hand paid by each of the parties to the other, the receipt of which payment is hereby by each of the parties confessed, and in consideration of the mutual covenants and conditions hereinafter set forth, and of the benefits expected to be derived herefrom, the parties hereby agree as follows:

Article I—Definitions.

Section 1—The term, "points of delivery" means the various points where the transmission lines of "Northwestern" meet the transmission lines of "Dakota."

Section 2—The term, "surplus energy" means that energy which either company may, in its judgment, have available from time to time and desire to furnish and sell to the other company and which energy the other company may desire to take, and for which it agrees to pay.

Section 3—The term, "emergency power" means that energy which either company, upon receiving notice from the other company, can and does furnish the other company during an emergency caused by the failure or breakdown of any of the facilities of the other party.

Section 4.—The term "billing period" means that period between successive meter readings taken for the purpose of power and energy billing which reading will be taken as nearly as practicable on the 25th day of each month.

Section 5—The term "station generating capacity" with respect to any generating station owned, leased, or otherwise controlled by either of the parties hereto, shall mean the rated capacity in kilowatts of such station; or the number of kilowatts of capacity which such station can contribute to the interconnected system continuously (except for periods of repair and inspection), whichever is lower; subject, however, to the provisions of Section 1 of Article IV hereinafter.

Section 6—The term "Company generating capacity" with respect to either party hereto shall mean the sum total in kilowatts of all the several stations generating capacities of such party as above defined and described.

Section 7—The term "Company system maximum demand" as hereinafter designated with respect to either party for any year shall be the coincident demands (in

kilowatts) made upon the system of such party during that one normal integral hour in each calendar year in which hour the combined coincident system demands of both parties were greater in the aggregate than in any other hour previously recorded during that calendar year.

Section 8—The term "Company reserve capacity" with respect to either party shall mean the excess (in kilowatts) of the "Company generating capacity" of such party over and above the "Company system maximum demand" (in kilowatts) of such party during the calendar year.

Section 9—The term "per cent Company reserve capacity" with respect to either party shall mean the percentage which the "Company reserve capacity" of such party bears to the "Company system maximum demand" of such party.

Section 10—The term "per cent interconnected system reserve capacity" shall mean the percentage which the combined "Company reserve capacities" of both parties hereto bears to the sum of the "Company system maximum demands" of both parties hereto.

Section 11—The term "Required reserve" with respect to either party shall mean the amount (in kilowatts) obtained by multiplying the "Company system maximum demand" of such party by the "per cent interconnected system reserve capacity".

Section 12—The term "Company excess reserve capacity" with respect to either party shall mean the amount (in kilowatts) by which the "Company reserve capacity" of such party exceeds the "required reserve."

Section 13—The term "Company deficiency in required reserve" with respect to either party shall mean the amount (in kilowatts) by which the "required reserve" of such party exceeds the "Company reserve capacity."

Section 14—The word "term" unless otherwise indicated by the context shall include not only the original

term of the agreement but also any and every period of extension effected under the provisions hereof.

Article II—Term.

Section 1—This agreement will become effective on July 1, 1941, and will continue thereafter for a period of ten (10) years, and thereafter unless and until specifically terminated by written notice by registered mail from either party to the other party of its intention or desire to terminate this agreement and such notice of termination shall precede the intended and desired date of termination by not less than eighteen (18) months.

Article III—General Agreement—Voltage & Frequency.

Section 1—Voltage and Frequency—Power and energy to be delivered or interchanged hereunder between the parties hereto will be of a character commonly known as three phase, alternating current at approximately 60 cycles and at approximately 22,000/33,000 and/or 38,000 volts pressure or at any higher voltage as such voltage or pressure may now exist or may be hereafter mutually agreed upon at the points of interconnection between the transmission systems of the two companies.

Article IV—General Agreement—Reserve Capacity Charge.

Section 1—General Provisions—Subject to the terms and conditions of this agreement either party having a "deficiency in required reserve capacity" shall pay reserve capacity charges to the party having "Company excess reserve capacity" in accordance with and subject to the terms and provisicns hereinafter set forth.

(a) Operating Committee—The terms and conditions of this agreement including the determination of "Company generating capacity," "Company system maximum demand," "Company reserve capacity," the "per cent Company reserve capacity" and the "required reserve," shall be ascertained by an Operating Committee consisting of

two members, one member to be appointed by each of the parties hereto. In case the members of this Committee are unable to reach an agreement on any provision of this contract they will select a third party who shall be mutually agreeable to them and the decision of this third party shall be considered final and binding upon the parties hereto.

(b) Station Generating Capacity—The rated capacity (in kilowatts) of any generating station owned, loaned, leased and/or otherwise controlled by iether party hereto as defined in Section 6 of Article I shall, in general, be the sum of the manufacturers' name plate ratings at 0.8 power factor of all generating units therein, except those supplying power for station auxiliaries and/or not available for the supply of energy elsewhere or whose use is impractical or uneconomical. In case the Operating Committee shall determine, however, after full investigation and by unanimous agreement that a generating station should be rated on some basis other than the sum of the manufacturers' name plate ratings, such other rating shall be used for the purpose of this agreement.

For the purpose of this agreement and until such time as there has been a change in station or company generating capacity that may warrant a change in rating of any individual station or the total "Company generating capacity," it is agreed by the parties hereto that the "station generating capacity" and the "Company generating capacity" of each party shall be as hereinafter set forth:

Northwestern Public Service Company	
Station	Station Generating Capacity Rating (Kilowatts)
Aberdeen	6,250 Kw
Webster	760 "
Redfield	900 "
Faulkton	110 "
Huron	1,130 "
Highmore	140 "
Mitchell	7,500 "
Armour	980 "
Yankton	2,520 "
Company Generating Capacity	20,290 Kw

Dakota Public Service Company	
Station	Station Generating Capacity Rating (Kilowatts)
Beulah	6,000 Kw
Bismarck	5,250 "
Dickinson	700 "
Mott	230 "
Mobridge	1,000 "
Ellendale	400 "
Lemmon	235 "
Gettysburg	140 "
Company Generating Capacity	13,955 Kw

At any time when there shall have been a change which may call for a new rating, the rating previously established for any "Station generating capacity" or "Company generating capacity" may be brought up for revision by the Operating Committee. Capacity of any generating equipment which is temporarily out of service for repair or maintenance work shall not be deducted from the rating of the "Station generating capacity" during such temporary outage.

(c) Additional Capacity—When, in the opinion of the parties hereto, the interconnected system coincident demand increases to a point that the combined systems do not have adequate reserve facilities to supply the interconnected system load requirements or to assure reliable service, then, and in such event, the parties hereto shall agree on the installation of additional capacity. The location of such additional capacity shall be by mutual agreement as to the most feasible and practical location; the amount and nature of such additional capacity and by which party it shall be installed; taking into consideration the service requirements of each company in order that, upon completion of the installation, the requirements of the interconnected system will have been most effectively provided for. When such additional generating capacity becomes available to the interconnected system, the "Station generating capacity" and "Company generating capacity" for either or both parties shall be adjusted for future billing purposes.

No additions to "Station generating capacity" by either party will be considered for billing purposes except as both of the parties hereto have approved such additions, in writing.

Section 2—Determination of "Company Excess Reserve Capacity" and "Company Deficiency in Required Reserve Capacity."

(a) "Company excess reserve capacity" and "Company deficiency in required reserve capacity" are subject to redetermination each year and may be re-determined oftener

if a revision is warranted by the installation or removal of equipment that increases or decreases the "Company generating capacity" of either of the parties hereto.

In December of each year the Operating Committee shall determine the "Company system maximum demand" as well as the "Company generating capacity" for each of the parties hereto and shall assemble and prepare an exhibit in form similar to Exhibit "B" for the year 1941, attached hereto. This exhibit shall be marked "Exhibit B" and signed by each member of the Operating Committee and shall become the basis for billing under this agreement for the ensuing year, or until such time as interim adjustment is warranted by a change in station generating capacity of either party hereto.

It shall be the duty of the Operating Committee to ascertain from the combined "Company generating capacities" and the combined "Company system maximum demand" the combined "Company reserve capacities" in order to determine the "required reserve" and the amount which the company having "Company excess reserve capacity" shall stand ready to supply to the company having a "Company deficiency in required reserve capacity."

In case of a "Company deficiency in required reserve capacity" such deficiency shall be determined by deducting the "Company reserve capacity" from the "required reserve" for the party having a deficiency, but for billing purposes the "required reserve" in kilowatts shall in no event exceed 25% of the "Company system demand."

(b) The "Company system maximum demand" of either party hereto, as defined in Section 7 of Article I hereof, shall be ascertained by the Operating Committee.

The time and date when such "Company system maximum demands" are ascertained shall be shown on Exhibit "B".

(c) Either Company having a "company deficiency in required reserve capacity" as determined under Section 2-(a) of Article IV hereof shall be deemed to have estab-

lished hereunder demand for firm power upon the other party hereto for the number of kilowatts constituting such deficiency. Such company having a "Company deficiency in required reserve capacity" shall pay to the other company a "reserve capacity charge" at the rate hereinafter specified in Article V.

(d) Unless otherwise mutually agreed, the company having a "Company excess reserve capacity" agrees hereunder to maintain such capacity in readiness to furnish and supply power to the company having a "Company deficiency in required reserve capacity", up to the amount of such excess (not to exceed 25%).

(e) Subject to the terms and conditions of this agreement each company shall furnish surplus energy to the other company, as available and required.

(f) It is further understood and agreed that under emergency conditions either party shall supply the other party with emergency power up to the reasonable limit of its ability.

Article V—Rates and Charges.

Section 1—Company Reserve Capacity Charge—Subject to the terms and conditions of this agreement the company with a "Company deficiency in required reserve capacity" as provided in Section 2 of Article IV hereof, shall pay the other company having "Company excess reserve capacity" a charge of Thirteen Dollars and Twenty Cents ($13.20) per year, per kilowatt of such deficiency. One twelfth of such charge shall be due and payable at the expiration of each calendar month during the term of this contract.

Section 2—Energy Charges—All energy delivered under this agreement shall be billed and paid for at the rate of five tenths (0.5) cents per kilowatt hour.

In addition to the energy charge, billing for emergency power may by agreement be surcharged with the addi-

tional expense incurred by the delivering party in placing in operation and operating high cost plants for the sole purpose of supplying such emergency power. It is the intent that the delivering company will not make a profit on such emergency power but will be reimbursed for all added expense that the delivering company may incur during and on account of such emergency.

It is understood between the parties hereto that fuel prices and generating efficiencies may change and may require an adjustment in the energy rate contained in this Section.

In January of 1942, and of each year thereafter, the parties hereto shall review production costs and if necessary re-determine the energy rate to be charged. Such revision, if any, will be effected by supplement to this contract.

Section 3.—Transmission Line Charges—As "Dakota's" share of the fixed charges, maintenance and operating expenses incurred by "Northwestern" in its ownership and operation of the interconnection facilities enumerated above, "Dakota" agrees to pay "Northwestern" the sum of $1,666.66 per month beginning January 1, 1936 and continuing through the payment due June 1, 1950 and the further sum of $1,348.82 on July 1, 1950. Beginning August 1, 1950 and continuing monthly thereafter such monthly payments shall be $442.53. This charge is over and above all other charges provided herein.

"Dakota" has no obligation to pay "Northwestern" for any part of the construction cost of the interconnection facilities enumerated above or for the use of such facilities for any period prior to January 1, 1936.

Article VI—Metering.

Suitable standard 33 kilovolt and/or 22,000/38,000 volt metering equipment agreeable to both parties shall be installed, owned and maintained by "Northwestern" at the points of delivery (or as near thereto as practicable). Meters shall be of such number, type and arrangement as

will show separately the amounts of energy delivered at each location. Metering equipment will be tested at intervals not exceeding sixty (60) days with a representative of each party present. If the metering equipment is found to be inaccurate, it shall be restored to a condition of accuracy. If inaccuracy exceeds 2%, the readings of the meters during a preceding period of not more than thirty (30) days will be corrected and payments adjusted accordingly.

"Dakota" may at its own expense install and maintain duplicate metering equipment at the points of delivery for the purpose of checking the meters installed and maintained by "Northwestern" and the readings thereof.

If during any period of time and for any reason whatsoever, the meters installed by "Northwestern" fail wholly to register the energy delivered readings of meters installed by "Dakota" shall be controlling; and if "Dakota" has not installed meters, or if its meters have failed wholly to register during this period of time, the amounts of energy delivered will be estimated according to the amounts previously delivered under substantially similar conditions.

Article VII—Continuity of Service.

Each of the parties hereto will exercise reasonable diligence and care to avoid interruptions in delivery of energy hereunder but will not be liable for any damage or loss which may be occasioned by any failure or interruptions caused by fires, strikes, riots, floods, lightning, storms, acts of God, civil disturbances, action of Public Authority, litigation, break-downs, or causes beyond reasonable control.

Either of the parties may take equipment out of service for repairs or to make changes in equipment or to install new or substitute equipment or for any similar purpose, but only for such time as may be reasonably necessary.

It is understood and agreed that each of the parties hereto will use reasonable diligence and care in maintaining each of its generating stations at its rated capacity as determined and agreed upon by the Operating Committee.

Article VIII—Liability.

Each party hereto shall save and keep the other harmless from any and all loss, cost, damage or expense, including attorney fees for, or by reason of, any claim for injury to its own employees at any location, and to persons or property occasioned by the electric power or equipment owned or operated by it, however caused. Neither party hereto, assumes any responsibility for the equipment of the other party.

Article IX—Bills and Payment.

Bills shall be rendered each month as nearly as practical on or before the 5th day of the calendar month succeeding the meter reading date and will be payable within ten days from the date thereof.

If either party fails to perform any of its obligations under this contract, including prompt payment of monthly bills, the other party may suspend delivery of energy hereunder and will not be liable in any manner for loss or damage arising from such suspension. No such suspension will interfere with the enforcement by either party hereto of any legal right or remedy or relieve the delinquent company from liability to pay the "reserve capacity charge" during any such suspension. No delay by the parties hereto in enforcing any of their rights hereunder will be deemed a waiver of such rights.

Article X—Conclusion.

This contract will inure to and be binding upon the parties hereto, their successors and assigns.

It is understood and agreed that this agreement cancels and supersedes the Interchange Capacity Agreement, dated July 1, 1939, and the Interconnection Contract, dated July 1, 1939, between the parties hereto.

In Witness Whereof, the parties hereto have caused this contract to be executed by their duly authorized officers

and impressed with their respective corporate seals the date and year first above written.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By A. B. SANBORN,
President.

Attest:

J. F. BUCKMIER,
Secretary.

(Corporate Seal)

DAKOTA PUBLIC SERVICE COMPANY,

By C. L. SANDSTEDT,
Vice-President.

Attest:

RALPH MAUCH,
Ass't Secretary.

(Corporate Seal)

Exhibit A (page 101) is shown on Card 11

Northwestern Public Service Co.,
Supplement No. 1,
Effective Date: May 8, 1943,
Filing Date: Apr. 8, 1943,
to
Rate Schedule FPC No. 6.

(Federal Power Commission
Apr. 8, 1943 Received)

Supplemental Agreement made March 13th, 1943, between Northwestern Public Service Company (Northwestern) and Dakota Public Service Company (Dakota).

There exists between the parties an Agreement, dated July 1, 1941 (herein called Basic Agreement) relating to inter-change capacity and energy, which Agreement supersedes two prior agreements known as Interconnection Contract and Interchange Capacity Agreement, both dated July 1, 1939. Northwestern owns certain interconnection facilities which are described in the Basic Agreement and at January 1, 1936. Northwestern's investment in these interconnection facilities was $303,449.26. The Basic Agreement is for a minimum term of ten years and thereafter until terminated by either party on 18 months prior written notice and provides that Dakota shall pay Northwestern the sum of $1666.66 per month for the period January 1, 1936 to June 30, 1950, inclusive, the sum of $1,348.82 on July 1, 1950, and beginning August 1, 1950, the sum of $442.53 per month. The foregoing payments made and to be made by Dakota represent the agreed amount required fully to amortize by July 1, 1950, a one-half share or $151,724.63 of the aforesaid Northwestern investment with interest in the interim at 5% per annum on the unamortized portions of the one-half share and also the monthly amount of $442.53 to be contributed by Dakota to the cost of operation, maintenance, taxes, insurance and all other charges applicable to the interconnection facilities. Whereas the two prior agreements were for indefinite terms subject to termination on specified notice, the Basic Agreement provided a minimum term in order to afford Northwestern a measure of protection with respect to its

proposed investment in an installation of additional generating capacity at its Aberdeen Plant, a project which Northwestern has been compelled to abandon because of war conditions. Inasmuch as the underlying consideration for the minimum term no longer exists. the purpose of this Supplemental Agreement is to eliminate the minimum term and otherwise protect Northwestern with respct to any unamortized balance of one-half of its investment in the interconnection facilities.

Accordingly the parties mutually agree as follows:

1. Article I, Section 14 of the [Basis] Agreement is hereby eliminated.

2. Article II, Section 1, of the Basic Agreement is hereby amended to read as follows:

> "This Agreement will become effective on July 1, 1941, and shall continue thereafter unless and until terminated by written notice by registered mail from either party to the other party terminating the agreement. The Agreement may be terminated only at the end of a calendar month and the written notice shall precede the termination date by not less than 18 months."

3. Article V, Section 3, of the Basic Agreement is hereby amended by the addition of the following paragraph:

> "In event of the termination of this Agreement by either party to Article II, Section 1, hereof, then the obligation of Dakota to make further monthly payments under this Section 3 shall cease but Dakota shall pay Northwestern at the termination date (a) the unamortized balance of one-half of Northwestern's investment in the interconnection facilities, that is, the sum of $151,724.63 with interest at the rate of 5% per annum from January 1, 1936 to the date of termination on the unamortized balances thereof less such payments as may have been made on account thereof under this Section 3 and under prior agreements described in Article X below, and (b) any monthly payment or payments of $442.53 each due

prior to the termination date which at that date shall not have been paid."

4. Subject to the amendments herein prescribed the Basic Agreement shall continue in full force and effect as therein provided.

In Witness Whereof the parties hereto have caused this Agreement to be executed by their duly authorized officers and impressed with their respective seals this 13th day of March, 1943.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By A. B. SANBORN,
President.

Attest: J. F. BUCKMIER,
Secretary.

DAKOTA PUBLIC SERVICE COMPANY,

By C. L. SANDSTEDT,
Vice-President.

Attest: MARGARET FROST,
Assistant Secretary.

(Indorsed)—Filed Feb. 3, 1947, Roy B. Marker, Clerk, by C. C. Schwarz, Deputy.

(Motion of Defendant to Dismiss.)

United States District Court,
District of South Dakota,
Western Division.

Montana-Dakota Utilities Co., a corporation,
Plaintiff,
vs.
Northwestern Public Service Company, a corporation,
Defendant.

Now comes Northwestern Public Service Company, defendant in the above entitled cause, and moves the Court, pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure, to dismiss the above entitled action for want of jurisdiction over the subject matter for the following reasons:

1. The Complaint fails to set forth allegations necessary to confer jurisdiction upon this Court.

2. The Complaint does not show that any federal question is involved in this proceeding.

3. The Complaint alleges that the action is brought "under a law of the United States regulating commerce under said Federal Power Act" but fails to allege what law of the United States regulating commerce under the Federal Power Act is involved in this proceeding.

4. The Complaint refers to the Federal Power Act (a law of the United States which regulates commerce) but the Complaint fails to allege any right of Plaintiff created by said Federal Power Act which is an essential element of Plaintiff's alleged cause of action.

5. The Complaint does not show that the said action and proceeding is a suit or proceeding under any law of the United States regulating commerce but, on the contrary, shows that it is a suit or proceeding not arising under any law of the United States regulating commerce.

6. The Complaint fails to allege any right of Plaintiff created by the Constitution or laws of the United States, which is an essential element of Plaintiff's alleged cause of action and which will be supported if the Constitution or laws of the United States are given one construction or effect and will be defeated if the Constitution or laws of the United States are given another construction or effect.

7. The Complaint fails to allege any right of Plaintiff, created by the Constitution or laws of the United States, which is an essential element of Plaintiff's alleged cause of action, and on the contrary, clearly shows that Plaintiff's alleged cause of action is not founded upon a right created by the Constitution or laws of the United States.

8. Plaintiff's alleged cause of action does not really and substantially involve a dispute or controversy respecting the validity, construction or effect of the Constitution or laws of the United States nor does a determination of this suit depend thereon.

Dated this 20th day of February, 1947.

SYDNEY K. SCHIFF,
Chicago, Illinois,
MAX ROYHL,
Huron, South Dakota,
GEORGE E. LONGSTAFF,
Huron, South Dakota,
Attorneys for Defendants.

PAM, HURD & REICHMANN,
QUERIN P. DORSCHEL,
FREDRIC H. STAFFORD,
JOHN B. ROBINSON, JR.,
231 South La Salle Street,
Chicago 4, Illinois,
Of Counsel.

(Indorsed)—Filed Feb. 21, 1947. Roy B. Marker, Clerk.

Exhibit 1.

United States of America,
Federal Power Commission.

Commissioners:

Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

February 23, 1939.

In the Matter of
Northwestern Public Service Company.

Order Allowing Rate Schedule to Take Effect Prior to Date of Filing.

It appearing to the Commission that:

(a) On December 23, 1938, the Northwestern Public Service Company filed with the Federal Power Commission its agreement, dated October 7, 1936, with the Northern Power and Light Company, designated in the files of the Commission as Northwestern Public Service Company Rate Schedule F. P. C. No. 3, providing for the interchange of surplus electric energy, and emergency service and the rendition of transmission service by the Northwestern Public Service Company for the Northern Power and Light Company;

(b) Northwestern Public Service Company has requested that the said agreement be accepted by the Commission for filing, effective as of January 1, 1936;

(c) Good cause has been shown for, and the public interest will be served by, allowing Northwestern Public Service Company Rate Schedule F. P. C. No. 3 to take effect as of January 1, 1936;

The Commission orders that:

The agreement of October 7, 1936, between the Northwestern Public Service Company and Northern Power and Light Company, as filed with the Commission on December 23, 1938, and designated as

Northwestern Public Service Company Rate Schedule F. P. C. No. 3, be and the same is hereby allowed to take effect as of January 1, 1936.

By the Commission.

LEON M. FUQUAY,
Secretary.

Exhibit 2.

United States of America,
Federal Power Commission.

100-2
R-Contracts

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

February 23, 1939.

In the Matter of
Northwestern Public Service Company }

Order Allowing Rate Schedule to Take Effect Prior to Date of Filing.

It appearing to the Commission that:

(a) On December 23, 1938, the Northwestern Public Service Company filed with the Federal Power Commission its agreement, dated January 1, 1938, with the Northern Power and Light Company and the North Dakota Power and Light Company, designated in the files of the Commission as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, providing for the pooling of the generating facilities of these companies to make available to each of the said companies the spare or reserve power of the other companies, and also providing for the interchange of surplus electric energy and the furnishing of emergency service when needed;

(b) Northwestern Public Service Company has requested that the said agreement be accepted by the Commission for filing, effective as of January 1, 1938;

(c) Good cause has been shown for, and the public interest will be served by, allowing Northwestern Public Service Company Rate Schedule F. P. C. No. 4 to take effect as of January 1, 1938;

The Commission orders that:

The agreement of January 1, 1938, between the Northwestern Public Service Company, the Northern Power and Light Company, and the North Dakota Power and Light Company, as filed with the Commission on December 23, 1938, and designated as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, be and the same is hereby allowed to take effect as of January 1, 1938.

By the Commission.

LEON M. FUQUAY,
Secretary.

Exhibit 3.

United States of America,
Federal Power Commission.

Commissioners: Leland Olds, Chairman, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

March 31, 1942.

In the Matter of
Northwestern Public Service Company

Order Allowing Rate Schedule to Take Effect.

Upon consideration by the Commission of application filed by Northwestern Public Service Company, request-

ing that Northwestern Public Service Company Rate Schedule FPC No. 6, providing for the interchange of electric energy with Dakota Public Service Company, be allowed to take effect as of July 1, 1941;

It is ordered that:

(A) The aforesaid rate schedule be and it is hereby allowed to take effect as of July 1, 1941;

(B) The aforesaid rate schedule shall be deemed to have been filed and published in compliance with the Federal Power Act;

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, provision, or condition contained in the contract referred to herein;

(D) This order is without prejudice to any findings or orders which may be made by the Commission in any proceedings now pending, or hereafter instituted, by or against the applicant.

By the Commission.

LEON M. FUQUAY,
Secretary.

(Indorsed)—Filed June 3, 1947, Roy B. Marker, Clerk.

(Memorandum Opinion on Overruling of Motion of Defendant to Dismiss.)

A. Lee Wyman
District Judge

No. 241 W. D. Civil

United States District Court,
District of South Dakota

Deadwood, S. D., June 25, 1947.

Montana Dakota Utilities Co.,
vs
Northwest Public Service Co.
} Memo. Decision.

Messrs. Morrison & Skough,
Mobridge, S. D., Counsel for Plaintiff.

Messrs. Royhl & Longstaff,
Huron, S. D., Counsel for Defendant.

Gentlemen,

In considering the question presented by defendant's motion to dismiss the above entitled action, after a careful study of the briefs and authorities cited, I find myself unable to agree with the contentions presented in support of said motion. A discussion of the several points urged by defendant would extend this communication to an unreasonable length and serve no worthwhile purpose.

It is sufficient to say that the Federal Power Act specifies the method for the establishment of the lawful rate at which electric energy can be bought and sold at wholesale in interstate commerce and imposes a statutory duty upon those who thus deal in said commodity to buy or sell the same at the rate thus lawfully established. The imposition of this statutory duty creates a right in those who thus deal in electric energy to purchase or sell the same at the rate established pursuant to the provisions of the Act.

It appears by the complaint in this action that the same is based upon an alleged infringment of this right. It also

appears that there is at present a substantial controversy between the parties, the outcome of which depends upon the construction of the federal statute. The provisions made in the statute for affording administrative relief are not designed to remedy the wrongs upon which the instant case is based, and in my opinion, the allegations of the complaint are sufficient to bring the action within the jurisdiction of this Court. While the Power Act does not specifically authorize such a suit, in the absence of an adequate administrative remedy, the only relief remaining to those who have sustained damage by reason of such a breach of statutory duty as is set forth in the complaint, is in resort to the Court which, in my opinion, is vested with the necessary authority, as well as the duty to entertain such suit, by implication.

It follows that in my opinion the motion to dismiss must be denied. Therefore, upon presentation of the proper order to that effect, allowing the defendant the usual twenty days in which to answer, the same will be signed and entered of record.

I am returning to each of you the memorandum briefs which you submitted.

Yours very truly,

A. LEE WYMAN,
U. S. District Judge.

(Indorsed)—Filed June 25, 1947. Roy B Marker Clerk By Helen S Lambert Deputy

(Order denying Motion of Defendant to Dismiss and Fixing Time for Filing Answer.)

United States District Court
District of South Dakota
Western Division.

Montana-Dakota Utilities Co., a corporation,
Plaintiff,
—vs—
Northwestern Public Service Company, a corporation,
Defendant.

Civil No. 241 W. D.

The Defendant's Motion to Dismiss this action for want of jurisdiction over the subject matter, upon stipulation, coming on to be heard on June 3rd, 1947, each party appearing by its attorneys of record, the Court being fully advised in the premises, it is,

Ordered,

That Defendant's said Motion to Dismiss be and the same is hereby denied.

That defendant be and is hereby granted permission to serve and file answer within ten days from the date of the service of this Order.

Done in open Court at Deadwood, Lawrence County, South Dakota, this 3rd day of June, 1947.

By the Court:

A. LEE WYMAN,
Judge.

Attest:

ROY B. MARKER,
Clerk.

By HELEN S. LAMBERT (Seal of Court)
Deputy

(Indorsed)--Filed June 30, 1947 Roy B. Marker Clerk By Helen S Lambert Deputy

Answer of Defendant.

Now Comes Defendant, Northwestern Public Service Company, and in answer to the Complaint heretofore filed herein alleges as follows:

First Defense.

Defendant moves to dismiss the complaint of the Plaintiff and each and all of the causes of action contained therein, and herewith gives notice of said motion to dismiss, upon the ground that the claims and causes of action asserted by Plaintiff in its Complaint are not maintainable by Plaintiff because they were not assignable to Plaintiff for the reasons that:

(1) Said causes of action and claims are predicated and based upon tort liability and not upon contract, and

(2) Such purported assignment would be contrary to public policy in that said causes of action and claims are each based upon alleged fraudulent conduct and tort and therefore are not assignable by one corporation to another corporation, and

(3) That upon the purchase by Plaintiff of all of the capital stock of the Dakota Company,* Plaintiff became and then was the sole stockholder of the Dakota Company, and as such could have no right of action on fraud or tort claims in favor of the Dakota Company, either as assignee of the Dakota Company or as such sole stockholder of the Dakota Company.

Second Defense.

Defendant moves to dismiss the Complaint of Plaintiff and each and all of the causes of action contained therein, and herewith gives notice of such motion to dismiss, upon

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* For brevity the Northern Power and Light Company will be referred to herein as the Northern Company, the North Dakota Power and Light Company will be referred to as the North Dakota Company, and the Dakota Power and Light Company will be referred to as the Dakota Company.

the ground that this Court has no jurisdiction of the subject matter.

Third Defense.

Defendant moves to dismiss the Complaint of Plaintiff and each and all of the causes of action contained therein, and herewith gives notice of such motion to dismiss, upon the ground that said Complaint and each of the causes of action contained therein fail to state a claim upon which relief can be granted.

Fourth Defense.

Defendant, for answer to Plaintiff's Complaint, alleges:

First Cause of Action.

I.

Defendant denies the allegations contained in Paragraph I of the First Cause of Action of Plaintiff's Complaint, except that the Defendant admits that the amount in controversy, exclusive of interest and costs, exceeds $3,000.

II.

Defendant is without knowledge or information sufficient to form a belief as to the truth of any of the averments in Paragraph II of the First Cause of Action of Plaintiff's Complaint and, therefore, denies the same.

III, IV and V.

Defendant admits the allegations in Paragraphs III, IV, and V, respectively, of the First Cause of Action of Plaintiff's Complaint.

VI.

Defendant admits that on the first day of July 1939, Northern Company and North Dakota Company, pursuant to the laws of the State of Delaware, merged into one corporation, North Dakota Company being the surviving corporation pursuant to the terms of said merger and chang-

ing its name in said merger proceedings to Dakota Public Service Company, and that said Dakota Public Service Company thereafter operated the physical public utility properties formerly owned by Northern Company and North Dakota Company, but Defendant denies each of the other allegations contained in Paragraph VI of the First Cause of Action in Plaintiff's Complaint.

VII.

Defendant admits that the Northern Company and the North Dakota Company made and entered into an agreement of merger; Defendant is without knowledge or information sufficient to form a belief as to the truth of and, therefore, denies each of the other allegations contained in Paragraph VII of the First Cause of Action of Plaintiff's Complaint.

VIII.

Answering the allegations contained in Paragraph VIII of the First Cause of Action of Plaintiff's Complaint as supplemented by Exhibit "A" attached to and made a part of said Complaint, Defendant admits that F. E. Kreusi was the president and a director of said three corporations from January 1, 1935, to July 21, 1937, and that C. J. Strike was vice-president and a director of each of said three corporations from January 1, 1935, to July 21, 1937, and was the president and a director from July 21, 1937, to June 1, 1938; that W. R. Gazin was a vice-president and a director of said three corporations from January 1, 1935, to January 31, 1935; that C. L. Sandstedt was secretary-treasurer and a director of said three corporations from January 1, 1935, to June 7, 1938, and was vice-president, treasurer and a director of said three corporations from June 7, 1938, to July 1, 1939, and was vice-president, director and treasurer of the Dakota Company and Defendant from July 1, 1939, to June 28, 1944; that J. F. Buckmier was assistant secretary and assistant treasurer of the Northern Company, the North Dakota Company and defendant from January 1, 1935, to February 26, 1935, and a director of Defendant from January 1, 1935, through 1945, and a secretary of Defendant from June 7, 1938, through 1945; that R. L. Walsh was assistant

secretary and assistant treasurer of Defendant from February 26, 1935, to February 28, 1936; that G. R. McArthur was a director of Defendant from January 31, 1935, through 1945, and the vice-president and a director of the Northern Company, the North Dakota Company, the Dakota Company and this Defendant from July 21, 1937, through October 19, 1945; that Wm. M. Dunn was assistant secretary and assistant treasurer of Defendant from February 28, 1936, to November 27, 1936, and that he was treasurer and a director of Defendant and of the Dakota Company from July 24, 1944, through October 19, 1945; that E. W. Dempewolf was assistant secretary and assistant treasurer of Defendant from November 27, 1936, to April 21, 1941; that A. B. Sanborn was the president and a director of Defendant, the Northern Company, North Dakota Company and the Dakota Company continuously from July 1, 1938, to October 19, 1945, and that Ralph Mauch was assistant secretary and assistant treasurer of the Dakota Company and Defendant from April 12, 1941, to September 14, 1942.

The terms stated herein for which said offices were held are applicable to the several corporations mentioned only during such time as each was in existence. Defendant further alleges and admits that the directors of this Defendant for the times covered by the Complaint from 1935 through 1945 were as has been heretofore shown in the preceding paragraph, and that in addition thereto, B. L. Palm was a director from July 21, 1937, to April 18, 1939, and during the years 1939, 1940, 1941, 1942, 1943, 1944 and 1945, W. J. Allen, W. J. Fantle (deceased September 17, 1945) and O. C. Stokke were directors; that S. W. White was a director of the North Dakota Company and the Northern Company during the years 1935 to July 1, 1939, and of the Dakota Company from July 1, 1939, to October 19, 1945, and that to the best knowledge, information and belief of Defendant, J. F. Buckmier was a director of the Northern Company and the North Dakota Company from March 10, 1937, to July 1, 1939, and secretary of said companies from June 7, 1938, to July 1, 1939, and a director and secretary of the Dakota Company from July 1, 1939, to October 19, 1945.

Further answering the allegations contained in Paragraph VIII of the First Cause of Action of Plaintiff's Complaint, Defendant alleges that in each instance where any director or officer of Defendant also held the position of a director or officer in the Northern Company, the North Dakota Company or the Dakota Company, such fact was made known to the Federal Power Commission and the holding of such positions was authorized by order of the Commission issued pursuant to the provisions of Section 305 (b) of the Federal Power Act upon due showing in form and manner prescribed by the Commission that neither public nor private interests would be adversely affected thereby.

As to all other matters and things as alleged in said Paragraph VIII of the First Cause of Action and said Exhibit "A" attached to the Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth thereof (the said books and records of said corporations other than Defendant's being in the possession of the Plaintiff) and, therefore, Defendant denies the allegations of said Paragraph and said Exhibit "A" except as herein specifically admitted.

IX.

For answer to Paragraph IX of Plaintiff's First Cause of Action, Defendant admits that pursuant to Order No. 36 of the Federal Power Commission Defendant filed with said Commission its Northwestern Public Service Company Rate Schedule F. P. C. No. 1, a true and correct copy of which is attached to the Complaint herein marked Exhibit "A-1", but denies that said Rate Schedule was filed on February 7, 1937 and alleges the fact to be that said Rate Schedule was filed on February 7, 1936. Further answering the allegations contained in Paragraph IX of Plaintiff's First Cause of Action, Defendant admits that it entered into an agreement, dated October 7, 1936, with the Northern Company, a copy of which is attached to the Complaint as Exhibit "B", and that the corporate officers who executed the same on behalf of the respective parties were and held the respective offices shown by the contract, and that the directors of Defendant at that time were as

alleged in said Paragraph, but denies that the requirements of Section 205 (d) of the Federal Power Act were not complied with, and alleges the fact to be that the original of said Exhibit "B" was by Defendant filed with the Federal Power Commission on December 23, 1938, and thereafter and for good cause shown said Federal Power Commission, on February 23, 1939, entered its order that said Agreement, Exhibit "B", of October 7, 1936, and designated therein as Northwestern Public Service Company Rate Schedule No. 3, be allowed to take effect as of January 1, 1936, and that a true and correct copy of said order so entered by the Federal Power Commission is attached to this Answer and made a part hereof as Exhibit No. 1.

X.

Defendant admits those allegations contained in Paragraph X of the First Cause of Action of Plaintiff's Complaint that the portion of the Aberdeen interconnected substation and control equipment, the Gettysburg substation and the transmission lines referred to in said Exhibit "B" were constructed in 1930, but Defendant denies that said facilities were constructed for the sole use and benefit of the Defendant. On the contrary, Defendant alleges that the principal advantage and benefit of the installation of such facilities was for and inured to said North Dakota Company, the Northern Company and the Dakota Company, predecessors of Plaintiff.

Defendant alleges that at the time of the construction by Defendant of the interconnection and substation facilities referred to in Exhibit "B" to the Complaint, the only generating plants of Northern Company available for service to the South Dakota communities served by the Northern Company were four plants located at Mobridge, Gettysburg, and Lemmon, South Dakota, and at Ellendale, North Dakota; that such plants were each small, isolated and completely incapable of supporting the demands thereon from the areas served by the Northern Company; that the generating plants of the North Dakota Company available to supply the Northern Company were located at Beulah and Bismark, North Dakota, remote from the principal

service areas of the Northern Company, and in addition thereto North Dakota Company had small plants at Dickinson, Mott and Mandan, North Dakota; that because of this situation, the Northern Company was in dire need of either additional electric generating facilities or other additional sources of electric energy, so as to be able to carry its peak loads and to provide essential protection against the hazards of weather, poor transmission and of an inadequate and unreliable supply of energy; that this need was so great that the Northern Company's service had become precarious and there had developed threats of municipal ownership in several parts of its territory, which threats were satisfied by the promise of improved service to result from the construction of said interconnection facilities by Defendant; that at that time there was not an adequate reserve in the combined systems of the North Dakota Company the Northern Company, and that not one of the North Dakota Company, the Northern Company, or their then parent, United Public Utilities Company was financially circumstanced so as to be able to provide for the construction of the required additional generating capacity or any part of the cost of the interconnection facilities; that there was no means for procuring such reserve capacity other than by an interconnection with the system of Defendant and the construction of said interconnection facilities by Defendant; that there was no other electric utility company with which either the North Dakota Company or the Northern Company could have been connected in 1930 to provide comparable reserve capacity.

Defendant further alleges that the interconnection and substation facilities referred to in Exhibit "B" of the Plaintiff's Complaint and the purposes for which they were constructed and operated are as follows:

1. An interconnection consisting of a 38 kv transmission line from the Aberdeen substation of Defendant running northwards a distance of 20 miles to the town of Barnard, South Dakota; the purpose of such interconnection facility was to permit the Northern Company to protect its service area north, northwest and west of Barnard by access to the Aberdeen generating capacity of Defendant.

2. An interconnection consisting of a 38 kv transmission line from the same Aberdeen substation running westward a distance of 28½ miles to the town of Ipswich, South Dakota; the purpose of such interconnection facility was to protect the service of the Northern Company at Ipswich and the area of said company lying north and west of Ipswich, South Dakota.

3. A 62 mile 33,000 volt transmission line running from Highmore to Gettysburg, South Dakota; the purpose of such interconnection facility was to permit service at Gettysburg, which was then served by the Northern Company, to be tied into the generating capacity of Defendant to the southward, namely at Huron, and at Mitchell, South Dakota, and to the northward and eastward at Aberdeen, South Dakota.

4. A portion of the Aberdeen interconnected substation and control equipment used exclusively for interconnection with the system of the Northern Company; and

5. A substation at Gettysburg used exclusively for interconnection with the system of the Northern Company and serving Gettysburg.

Defendant further alleges that all of the aforesaid service areas are now part of the Plaintiff's system; that none of said interconnection facilities served any business purpose of the Defendant, either at the time of construction or any time thereafter, other than the purpose of service to the Northern Company or the performance of the agreements with Plaintiff and its predecessors, excepting that Defendant restrung a theretofore existing circuit on the new pole line constructed by it from Aberdeen to Barnard, and, since August 1934, served from such new pole line the Aberdeen wells; that said substation facilities at Aberdeen and Gettysburg, because of voltage differences, were of no use to Defendant other than as interconnection facilities with Plaintiff and its predecessors;

Defendant further alleges:

That the construction of such interconnection facilities afforded the Northern Company access to all of the prin-

cipal generating stations of Defendant, and afforded also a looping of such access by virtue of the fact that the service area of the Northern Company at and north of Gettysburg was, after the construction of such interconnection facilities, protected both by the interconnection facilities described in items 1 and 2 above and by the interconnection facilities described in item 3 above; that by reason of such looping and access to Defendant's generating capacity, not only were the immediate service areas of the Northern Company protected and benefited, but the entire systems of the then Northern Company and the North Dakota Company were protected and benefited;

That a further material benefit which flowed to Plaintiff and its predecessor companies from the construction of the interconnection facilities by Defendant was and is the ability of Plaintiff and its predecessors to dispose of surplus energy at an advantageous price; that if the surplus energy in question were not sold to Defendant it could not otherwise be disposed of profitably by Plaintiff; and that the sales of surplus energy to Defendant always have yielded a profit to Plaintiff and its predecessors based upon its or their incremental fuel cost of the energy so sold; and, further, that Plaintiff and its predecessors were enabled to operate the Beulah plant at capacity or near capacity at all times resulting in better operating efficiency and the production of energy for their other customers at a lower cost;

That another benefit realized by Plaintiff and its predecessors from the construction of said interconnection facilities flows from the fact that the Beulah plant, one of the principal plants, is a minemouth plant in that it obtains its fuel directly from the mines of the Knife River Coal Mining Company, which is located at the same point; Knife River Coal Mining Company at all times mentioned in Plaintiff's Complaint to and including October 19, 1945, was a wholly owned subsidiary of United Public Utilities Company and later of its successor, United Public Utilities Corporation, which companies also wholly owned the North Dakota Company and the Northern Company; that Defendant is informed and believes and upon such information and belief alleges that Plaintiff on October 19, 1945, also acquired

from United Public Utilities Corporation all of the outstanding capital stock of said Knife River Coal Mining Company;

That because of the proximity of the Beulah plant to the mine of said Knife River Coal Mining Company and of the ability of Plaintiff and its predecessors to operate the Beulah plant continuously at capacity or near capacity through the advantageous sale of the surplus energy to Defendant; Plaintiff and its precedessors were able to use and consume the screenings from said mine (which otherwise would not have been profitably disposed of) and more lignite was used at said plant than would otherwise have been the case; that Knife River Coal Mining Company thereby was enabled also to make a substantial profit through the disposition of its screenings and the sale of the additional lignite to Plaintiff and its predecessors at an advantageous price to Knife River Coal Mining Company.

XI.

Defendant admits the allegations of Paragraph XI of the First Cause of Action of Plaintiff's Complaint except that it denies the inference therein contained that it made no charge for energy delivered.

XII.

Defendant admits the allegations of Paragraph XII of the First Cause of Action of Plaintiff's Complaint.

XIII.

Defendant admits the allegations in Paragraph XIII of the First Cause of Action of Plaintiff's Complaint that it received Seventy Thousand Dollars ($70,000.00) from the Northern Company at the rate of $1,666.66 per month but denies each and every other allegation, matter and thing set forth in Paragraph XIII of Plaintiff's said First Cause of Action, and alleges the facts to be as follows:

That the Defendant was a subsidiary of the Middle West Corporation during all of the times covered in Plaintiff's Complaint. That the Northern Company was merged with the North Dakota Company on or about

July 1, 1939, the corporate name of which was then changed to Dakota Public Service Company, and that until said merger and at all times mentioned in the Complaint prior thereto, said Northern Company and said North Dakota Company were, and said Dakota Company after said merger continued to be until the sale by United Public Utilities Corporation of the securities of Dakota Company to Plaintiff, wholly owned subsidiaries of United Public Utilities Company or its successor, the present United Public Utilities Corporation; that United Public Utilities Company was in receivership or in bankruptcy from April 1932, to on or about January 1, 1935, as of which date its properties and assets were transferred to United Public Utilities Corporation, under the jurisdiction of the United States District Court for the Northern District of Illinois, Eastern Division; that during the receivership and bankruptcy proceedings referred to, Samuel W. White, who had had no previous connection with Defendant, Middle West Corporation or any of its subsidiaries, was the Receiver and later the Trustee of said United Public Utilities Company and upon said transfer of properties, became, has been and still is the President of its successor, the present United Public Utilities Corporation.

Further answering said Paragraph, Defendant alleges that the Board of Directors of said United Public Utilities Corporation has always been made up of persons independent of and having no connection with the Defendant, and Defendant further alleges that the individuals who served as common officers and directors of said Dakota Company and its predecessors and of Defendant were persons who were located on the properties of such companies, and that the relationships and contracts involved in this action were submitted for determination and decision on behalf of the Dakota Company and its predecessors to the Independent Board of Directors and officers of United Public Utilities Corporation, and on behalf of Defendant to representatives of the Middle West Corporation; and, further, that United Public Utilities Corporation

and the Middle West Corporation, each, had its own separate counsel in such matters.

Defendant further alleges that the contract set forth as Exhibit "B" to Plaintiff's Complaint was entered into after protracted negotiation, and extensive and independent arm's length bargaining between representatives of the Middle West Corporation, the parent of Defendant, on the one hand, and United Public Utilities Corporation, the parent of North Dakota Company and the Northern Company on the other hand; that said agreement was executed after independent study and investigation by the Middle West Corporation and United Public Utilities Corporation on behalf of their respective subsidiaries; and that said contract, and all charges and rate schedules therein provided for, were filed with the Federal Power Commission in accordance with the requirements of the Federal Power Act, as alleged and set forth in Paragraph IX of this Answer to Plaintiff's First Cause of Action, and that such rates and charges are fair, reasonable and equitable.

XIV.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XIV of Plaintiff's First Cause of Action, and, therefore, denies the same.

XV.

Defendant for further answer to Plaintiff's First Cause of Action and as a specific defense thereto, alleges: that the cause of action stated therein is barred by the provisions of Chapter 33.02 South Dakota Code, 1939, and in particular, subdivision 4 of Section 33.0232, and that more than six years have elapsed prior to the commencement of this action by the service of process herein upon the Defendant, and the said cause of action is barred by the said limitations named therein.

XVI.

Defendant, for further answer to Plaintiff's First Cause of Action and as a specific defense thereto, alleges:

That during all of the years covered in Plaintiff's Complaint the officers and directors of the United Public Utilities Company and its successor, United Public Utilities Corporation, visited the territory serviced by the Northern Company, the North Dakota Company and the Dakota Company, and were informed and had first hand information concerning the properties of said last named corporations and did observe the operations of said corporations in respect to and with regard for the interconnection facilities and the matters covered by Exhibit "B" to Plaintiff's Complaint; that by corporate reports and accountings, the said officers, owners and directors of United Public Utilities Company and its successor, United Public Utilities Corporation, sole owners of the Northern Company, the North Dakota Company and the Dakota Company, had full knowledge of the complete detailed operations under said contract (Exhibit "B") and at all times during the effective date of said contract said operations were fully considered, approved and confirmed by said owning companies; that said Exhibit "B" was executed at the direction of said United Public Utilities Corporation; that at a hearing before the Securities and Exchange Commission in certain proceedings on behalf of said United Public Utilities Corporation at which its officers and counsel were present and participating said United Public Utilities Corporation through its officers and counsel did submit and support said Exhibit "B", as well as submitting and supporting the interlocking officers and directors of Defendant, the Northern Company, the North Dakota Company and the Dakota Company and did contend in said proceedings that said contract and said relations were fair and reasonable and that said contract was made and entered into only after careful and protracted negotiation by and between said United Public Utilities Corporation and/or its predecessor, and with full knowledge by said companies through its officers and directors and other representatives of all of the facts and circumstances surrounding and incident to said contract.

Defendant further alleges that United Public Utilities Corporation and its predecessor company, United Public Utilities Company, in connection with and as a part of the relationships between Defendant, the Northern Company and the North Dakota Company referred to in the Complaint, and in order to make a further profit for Knife River Coal Mining Company (wholly owned by United Public Utilities Corporation and its predecessor) made arrangements whereby Defendant converted its Aberdeen generating station to the use of lignite produced by said Knife River Coal Mining Company (against defendant's prior use of Montana coal at said station) and purchased substantial amounts of such lignite from Knife River Coal Mining Company, all to the benefit of said Company and said United Public Utilities Corporation and its said predecessor.

Defendant further alleges that prior to the purchase by Plaintiff from United Public Utilities Corporation of the securities of the Dakota Company and of Knife River Coal Mining Company, Plaintiff made an exhaustive, complete and detailed study of the properties, plants and facilities of both the Dakota Company and Knife River Coal Mining Company, and of their books and records, and of their agreements and contractnal relations (including Exhibit "B" to the Complaint), and had complete access to all such books, records, agreements and properties; that Plaintiff caused an examination to be made by its engineers, accountants, officers and lawyers of said properties, books, accounts, records, agreements and contractual relations (including said Exhibit "B"); that Plaintiff questioned extensively officers and employees of Defendant prior to its purchase of said securities, particularly with respect to the agreements between the Dakota Company, Knife River Coal Mining Company and Defendant (including Exhibit "B") and the operations of the companies under and pursuant to said agreements and as to the interlocking officers and directors of said companies.

Defendant further alleges that at all times from 1930 to the present, Plaintiff and its various predecessor corporations, including Knife River Coal Mining Company, had full knowledge of the terms and conditions and relation-

ships and contracts (including Exhibit "B") operated under said contracts, and accepted and retained all of the benefits accruing therefrom.

Defendant further alleges that by virtue of the matters and things hereinabove stated, Plaintiff is estopped from recovering herein upon any of the claims and demands contained in the First Cause of Action of its Complaint.

Second Cause of Action.

I.

Answering Paragraph I of Plaintiff's Second Cause of Action, Defendant realleges and expressly by reference makes a part of its Answer to said Paragraph I of Plaintiff's Second Cause of Action the allegations contained in Paragraphs I, II, III, IV, V, VI, VII and VIII set forth in its Answer to Plaintiff's First Cause of Action.

II.

Defendant denies the allegations contained in Paragraph II of Plaintiff's Second Cause of Action and alleges the facts to be that Defendant purchased from Plaintiff's predecessors 23,049,842 kilowatt hours of electric energy, which Defendant alleges was mostly "dump" or "surplus" energy, and Plaintiff's predecessors purchased from Defendant 10,499,461 kilowatt hours of electric energy, which Defendant alleges was mostly "peak" energy, during the period from September 1, 1935, to July 1, 1939; Defendant admits that the net exchange of electric energy amounted to 12,550,381 kilowatt hours from Plaintiff's predecessors to Defendant, during the aforesaid period, for which Defendant paid Plaintiff's predecessors the sum of $62,751.90; and Defendant denies that said 12,550,381 net kilowatt hours of electric energy was of the just and reasonable value of $94,127.86. Further answering the allegations contained in Paragraph II of Plaintiff's Second Cause of Action, Defendant admits that some of the electric energy exchanged between Defendant and Plaintiff's predecessors may have traveled over one or more of the transmission lines referred to in said Paragraph.

III.

Defendant denies each and every allegation contained in Paragraph III of Plaintiff's Second Cause of Action except such thereof as is hereinbefore admitted or qualified.

IV.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV of Plaintiff's Second Cause of Action, and, therefore, denies the same.

V.

For further answer to Plaintiff's Second Cause of Action, Defendant realleges Paragraphs XV and XVI of Defendant's answer to Plaintiff's First Cause of Action and hereby incorporates said Paragraphs herein and makes them a part of Defendant's answer to Plaintiff's Second Cause of Action, and said allegations shall be deemed to apply to the appropriate corporations and agreements referred to in this Second Cause of Action.

Third Cause of Action.

I.

Answering Paragraph I of Plaintiff's Third Cause of Action, Defendant realleges and expressly by reference makes a part of its Answer to said Paragraph I of Plaintiff's Third Cause of Action the allegations contained in Paragraphs I, II, III, IV, V, VI, VII and VIII set forth in its answer to Plaintiff's First Cause of Action.

II.

Defendant admits the allegations contained in Paragraph II of Plaintiff's Third Cause of Action except that Defendant alleges that no energy was exchanged between said corporations prior to May 1, 1930.

III.

For answer to Paragraph III of Plaintiff's Third Cause of Action, Defendant admits that pursuant to Order No. 36

of the Federal Power Commission Defendant filed with said Commission its Northwestern Public Service Company Rate Schedule F. P. C. No. 1, a true and correct copy of which is attached to the Complaint herein marked Exhibit "A-1", but denies that said Rate Schedule was filed on February 7, 1937 and alleges the fact to be that said Rate Schedule was filed on February 7, 1936. Further answering the allegations contained in Paragraph III of Plaintiff's Third Cause of Action, Defendant admits that it entered into an Agreement, dated January 1, 1938, with Northern Company and North Dakota Company; denies that said Agreement was entered into for the benefit of Defendant and to the detriment of the Northern Company and the North Dakota Company and alleges the fact to be that the primary benefit resulting from said Agreement was for the benefit of said Northern Company and North Dakota Company; and denies that the requirements of Section 205 (d) of the Federal Power Act were not complied with, and alleges the fact to be that said Agreement dated January 1, 1938 (Exhibit "C" to the Complaint) was by Defendant filed with the Federal Power Commission on December 23, 1938, and thereafter and for good cause shown said Federal Power Commission on February 23, 1939, entered its order that said Agreement, Exhibit "C", dated January 1, 1938, and designated therein as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, be allowed to take effect as of January 1, 1938 and that a true and correct copy of said order so entered by the Federal Power Commission is attached to this Answer and made a Part hereof as Exhibit No. 2.

IV.

Defendant denies each and every allegation contained in Paragraph IV of Plaintiff's Third Cause of Action, except that Defendant admits the execution of the Agreement therein referred to as "Exhibit 'C'", and that it received from the Northern Company as and for a reserve capacity charge the sum of $22,440 for the year 1938, and $9,068.40, for the period beginning January 1, 1939 and ending June 30, 1939. Further answering the allegations contained in Paragraph IV of Plaintiff's Third Cause of Action, De-

fendant states the fact to be that said Exhibit "C" was by Defendant filed with the Federal Power Commission on December 23, 1938, and thereafter and for good cause shown said Federal Power Commission, on February 23, 1939, entered its order that said Agreement, Exhibit "C", dated January 1, 1938, and designated therein as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, be allowed to take effect as of January 1, 1938, said order being Exhibit No. 2 to this answer, and states the fact to be that the rates and charges and the bases therefor set forth in said Exhibit "C" were fair and reasonable and the contract therefor, said Exhibit "C", was fairly arrived at as a result of arm's length dealing between the parties, their agents, owners and stockholders.

V.

Defendant specifically denies all of the allegations and matters alleged and set forth in Paragraph V of Plaintiff's Third Cause of Action.

VI.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VI of Plaintiff's Third Cause of Action and, therefore, denies the same.

VII.

For further answer to Plaintiff's Third Cause of Action Defendant realleges Paragraphs XV and XVI of Defendant's answer to Plaintiff's First Cause of Action and hereby incorporates said Paragraphs herein and makes them a part of Defendant's answer to Plaintiff's Third Cause of Action, except that in each instance where Exhibit "B" is mentioned or referred to therein it shall be deemed to be Exhibit "C", and the allegations shall be deemed to apply to the appropriate corporations referred to in this Third Cause of Action.

Fourth Cause of Action.

I.

Answering Paragraph I of Plaintiff's Fourth Cause of Action, Defendant realleges and expressly by reference makes a part of its answer to said Paragraph I of Plaintiff's Fourth Cause of Action the allegations contained in Paragraphs I, II, III, and VIII set forth in its answer to Plaintiff's First Cause of Action.

II.

Defendant admits the allegations contained in Paragraph II of Plaintiff's Fourth Cause of Action.

III.

Defendant denies each and every allegation contained in Paragraph III of Plaintiff's Fourth Cause of Action, except that Defendant admits that pursuant to Order No. 36 of the Federal Power Commission Defendant filed with said Commission its Northwestern Public Service Company Rate Schedule F. P. C. No. 1, a true and correct copy of which is attached to the Complaint herein marked Exhibit "A-1", but denies that said Rate Schedule was filed on February 7, 1937 and alleges the fact to be that said Rate Schedule was filed on February 7, 1936. Further answering the allegations contained in Paragraph III of Plaintiff's Fourth Cause of Action, Defendant admits that it entered into an agreement, dated October 7, 1936, with the Northern Company, a copy of which is attached to the Complaint as Exhibit "B", but denies that the requirements of Section 205 (d) of the Federal Power Act were not complied with and alleges the fact to be that said Exhibit "B" was by Defendant filed with the Federal Power Commission on December 23, 1938, and thereafter and for good cause shown said Federal Power Commission, on February 23, 1939, entered its order that said Agreement, Exhibit "B", of October 7, 1936, and designated therein as Northwestern Public Service Company Rate Schedule F. P. C. No. 3, be allowed to take effect as of January 1, 1936, and that a true and correct copy of said order so entered by the Federal Power Commission is at-

tached to this answer and made a part hereof as Exhibit No. 1.

Further answering the allegations contained in Paragraph III of Plaintiff's Fourth Cause of Action herein, Defendant realleges and expressly by reference makes a part of its answer to said Paragraph III of Plaintiff's Fourth Cause of Action the allegations contained in Paragraphs VI, VII, XI, XII and XIII set forth in its answer to Plaintiff's First Cause of Action.

Further answering the allegations contained in Paragraph III of Plaintiff's Fourth Cause of Action, Defendant admits it entered into an agreement dated July 1, 1939, with the Dakota Company, a copy of which is attached to the Complaint and marked Exhibit "D", and that the corporate officers who executed the same on behalf of the parties were and held the respective offices all as shown by said contract, and Defendant realleges and expressly by reference makes a part of its answer to Paragraph III of Plaintiff's Fourth Cause of Action the allegations contained in Paragraph XIII of its answer to Plaintiff's First Cause of Action herein, except that in each instance where Exhibit "B" is mentioned or referred to there, it shall be deemed to be Exhibit "D", and the allegations shall be deemed to apply to the appropriate corporations referred to in this Fourth Cause of Action. Defendant further alleges that the Agreement, Exhibit "D" to the Complaint, was filed with the Federal Power Commission on January 10, 1940 and designated as Northwestern Public Service Company Rate Schedule F. P. C. No. 5-A and the effective date of said contract declared by the Federal Power Commission to be July 1, 1939; said Rate Schedule No. 5-A was also designated by the Federal Power Commission to cancel Northwestern Public Service Company Rate Schedule F. P. C. No. 3.

IV.

Defendant in answer to the allegations set forth in Paragraph IV of Plaintiff's Fourth Cause of Action with reference to the interconnection facilities referred to in the contract attached to and made a part of Plaintiff's Complaint as Exhibit "D," realleges and expressly by

reference makes a part of its answer to said Paragraph IV of Plaintiff's Fourth Cause of Action the allegations contained in Paragraph X set forth in its answer to Plaintiff's First Cause of Action herein, except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "D."

V.

Defendant denies each and every of the allegations and legal conclusions in Paragraph V of Plaintiff's Fourth Cause of Action, and insofar as the conclusions therein refer to the purported meaning of said contract (Exhibit "D" to the Complaint), Defendant asks leave to refer to the instrument.

VI.

Defendant denies each and every allegation contained in Paragraph VI of Plaintiff's Fourth Cause of Action, except that Defendant admits the execution of the Agreement therein referred to as Exhibit "D", and further admits that some of the energy generated and transmitted by and between the parties to said Agreement may have traveled over the transmission lines referred to in said Paragraph VI.

Further answering the allegations contained in said Paragraph VI, Defendant admits that part of Paragraph VI of Plaintiff's Fourth Cause of Action wherein it is alleged that during the life of said contract the Dakota Company delivered to Defendant 15,961,599 kilowatt hours of electrical energy, which Defendant alleges was, in fact, mostly surplus or dump energy, and that the Defendant delivered to the Dakota Company 4,092,434 kilowatt hours of electric energy, which Defendant alleges was, in fact, mostly "peak" energy, and that the Dakota Company paid to Defendant for transmission line charges provided for by said contract $10,000 for the period of July 1, 1939, through December 31, 1939; $20,000 for the year 1940, and $10,000 for the period beginning January 1, 1941, and ending June 30, 1941, and further admits that Defendant paid to the Dakota Company for the net energy exchanged for the periods above shown the sum of $59,345.74, which was

the fair, reasonable and contract value thereof. Defendant denies each and every other thing, matter and allegation contained in said Paragraph VI of Plaintiff's Fourth Cause of Action.

VII.

Defendant denies each and every allegation contained in Paragraph VII of the Fourth Cause of Action of Plaintiff's Complaint.

VIII.

Defendant is without knowledge or information sufficient to form a belief and, therefore, denies all of the allegations of Paragraph VIII of Plaintiff's Fourth Cause of Action.

IX.

For further answer to Plaintiff's Fourth Cause of Action Defendant realleges Paragraphs XV and XVI of Defendant's answer to Plaintiff's First Cause of Action and hereby incorporates said Paragraphs herein and makes them a part of Defendant's answer to Plaintiff's Fourth Cause of Action, except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "D" and the allegations shall be deemed to apply to the appropriate corporations referred to in this Fourth Cause of Action.

Fifth Cause of Action.

I.

Answering Paragraph I of Plaintiff's Fifth Cause of Action, Defendant realleges and expressly by reference makes a part of its answer to said Paragraph I of Plaintiff's Fifth Cause of Action the allegations contained in Paragraphs I, II, III and VIII set forth in its answer to Plaintiff's First Cause of Action.

II.

Admits the allegations contained in Paragraph II of Plaintiff's Fifth Cause of Action.

III.

Answering the first subparagraph of Paragraph III of Plaintiff's Fifth Cause of Action, Defendant realleges and expressly by reference makes a part of its answer to said first subparagraph of Paragraph III of Plaintiff's Fifth Cause of Action the allegations contained in Paragraphs III and IV set forth in its answer to Plaintiff's Third Cause of Action.

In answer to the allegations contained in the second subparagraph of Paragraph III of Plaintiff's Fifth Cause of Action, Defendant admits entering into an agreement dated July 1, 1939, with the Dakota Company, copy of which is attached to the Complaint marked Exhibit "E", and further admits that the corporate officers who executed same on behalf of the several parties were and held the respective offices all as shown by said contract, but this Defendant denies each and every other matter or thing alleged in said second subparagraph of Paragraph III of Plaintiff's Fifth Cause of Action and realleges and expressly by reference makes a part of its answer to said second subparagraph of Paragraph III of Plaintiff's Fifth Cause of Action the allegations contained in Paragraph XIII of its answer to Plaintiff's First Cause of Action herein, except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "E", and the allegations shall be deemed to apply to the appropriate corporations referred to in this Fifth Cause of Action.

Answering the allegations contained in the third subparagraph of Paragraph III of Plaintiff's Fifth Cause of Action, Defendant denies each and every allegation contained therein and asks leave to refer to the Contract, Exhibit "E" to the Amended Complaint, for the true terms thereof.

IV.

Defendant denies the allegations contained in Paragraph IV of Plaintiff's Fifth Cause of Action except that it admits that since May of 1930 it exchanged energy with predecessors of the Dakota Company.

V.

Defendant denies each and every allegation contained in Paragraph V of Plaintiff's Fifth Cause of Action, except that Defendant admits the execution of the agreement therein referred to as Exhibit "E", and further admits that the bulk of energy interchanged during the period was generated in the State of North Dakota and transmitted to the State of South Dakota but Defendant alleges that the energy so generated and transmitted was, in fact, mostly "dump" or "surplus" energy.

Further answering the allegations contained in Paragraph V, Defendant admits that portion of Paragraph V of Plaintiff's Fifth Cause of Action wherein it is alleged that during the life of said Agreement, Exhibit "E", the Dakota Company paid to Defendant: for the period January 1, 1939 to December 31, 1939, $9,068.40; for the year 1940, $12,685.20; for the year 1941 to June 30, 1941, $2,138.40; and Defendant alleges that the said charges so made and paid were fair and reasonable, and the agreed contract value thereof. Defendant further alleges that the Agreement, Exhibit "E" to the Complaint, was filed with the Federal Power Commission on January 10, 1940, and designated as Northwestern Public Service Company Rate Schedule F. P. C. No. 5-B, and the effective date of said contract declared by the Federal Power Commission to be July 1, 1939; said Rate Schedule No. 5-B was also designated by the Federal Power Commission to cancel Northwestern Public Service Company Rate Schedule F. P. C. No. 4.

VI.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph VI of Plaintiff's Fifth Cause of Action, and, therefore, denies the same.

VII.

For further answer to Plaintiff's Fifth Cause of Action Defendant realleges Paragraphs XV and XVI of Defendant's answer to Plaintiff's First Cause of Action and hereby incorporates said Paragraphs herein and makes

them a part of Defendant's answer to Plaintiff's Fifth Cause of Action except that in each instance where Exhibit "B" is mentioned or referred to therein it shall be deemed to be Exhibit "E", and the allegation shall be deemed to apply to the appropriate corporations referred to in this the Fifth Cause of Action.

Sixth Cause of Action.

I.

Answering Paragraph I of Plaintiff's Sixth Cause of Action, Defendant realleges and expressly by reference makes a part of its answer to said Paragraph I of Plaintiff's Sixth Cause of Action the allegations contained in Paragraphs I, II, III and VIII set forth in its answer to Plaintiff's First Cause of Action.

II.

Admits the allegations contained in Paragraph II of Plaintiff's Sixth Cause of Action.

III.

Defendant admits it entered into an agreement dated July 1, 1941, with the Dakota Company, copy of which is attached to the Complaint and marked Exhibit "F", and that the corporate officers who executed the same on behalf of the contracting parties were and held the respective offices all as shown by said contract, but Defendant denies each and every other matter or thing contained in said Paragraph III of Plaintiff's Sixth Cause of Action and realleges and expressly by reference makes a part of its answer to Plaintiff's Sixth Cause of Action, Paragraph III, the allegations contained in Paragraph XIII of its answer to Plaintiff's First Cause of Action herein, except that in each instance where Exhibit "B" is mentioned or referred to therein it shall be deemed to be Exhibit "F", and the allegations shall be deemed to apply to the appropriate corporations referred to in this Sixth Cause of Action. Defendant further alleges that as a part of said Exhibit "F" there is included a supplemental contract dated March 13, 1943, by and between said Defendant and the

Dakota Company, which supplemental contract is attached to and made a part of Plaintiff's Complaint jointly with said Exhibit "F".

IV.

Defendant admits that since May of 1930, Defendant and the Dakota Company and its predecessors exchanged electrical energy, the largest amount thereof being generated by the Dakota Company and its predecessors, which Defendant alleges was, in fact, mostly "dump" energy, and Defendant further admits that no charge was made by either of the parties to said original of Exhibit "F", nor by the predecessors of the Dakota Company, on account of any so-called deficiency in generating capacity prior to January 1, 1939. Defendant denies each and every other allegation contained in said Paragraph IV of Plaintiff's Sixth Cause of Action.

V.

Defendant denies each and every allegation contained in Paragraph V of Plaintiff's Sixth Cause of Action, except that Defendant admits the execution of the agreement therein referred to as Exhibit "F", and further admits that the bulk of energy interchanged during the period was generated in the State of North Dakota and transmitted to the State of South Dakota but Defendant alleges that the energy so generated and transmitted was, in fact, mostly "dump" or "surplus" energy.

Further answering the allegations contained in Paragraph V, Defendant admits that portion of Paragraph V of Plaintiff's Sixth Cause of Action wherein it is alleged that during the life of said Agreement, Exhibit "F", the Dakota Company paid to Defendant: for the period July 1, 1941 to December 31, 1941, $2,138.40; for the year 1942, $17,199.60; for the year 1943, $8,514; for the year 1944, $9,992.40; and for the period from January 1, 1945 through October 19, 1945, $18,420.25; and Defendant alleges that the said charges so made and paid were fair and reasonable, and the agreed contract value thereof.

Further answering the allegations contained in Paragraph V of Plaintiff's Sixth Cause of Action, Defendant

alleges the fact to be that Defendant filed with the Federal Power Commission on February 28, 1942, its Northwestern Public Service Company Rate Schedule F. P. C. No. 6, and thereafter and for good cause shown said Federal Power Commission, on March 31, 1942, entered its order that said agreement, Exhibit "F", dated July 1, 1941, and designated therein as Northwestern Public Service Company Rate Schedule F. P. C. No. 6, be allowed to take effect as of July 1, 1941, and that a true and correct copy of said order so entered by the Federal Power Commission is attached to this answer and made a part hereof as Exhibit No. 3.

VI.

Defendant in answer to the allegations set forth in Paragraph VI of Plaintiff's Sixth Cause of Action with reference to the interconnection facilities referred to and made a part of Plaintiff's Complaint as Exhibit "F", realleges and expressly by reference makes a part of its answer to said Paragraph VI of the Plaintiff's Sixth Cause of Action, the allegations contained in Paragraph X set forth in its answer to Plaintiff's First Cause of Action herein except that in each instance where Exhibit "B" is mentioned or referred to therein it shall be deemed to be Exhibit "F", and the allegations shall be deemed to apply to the appropriate corporations referred to in this Sixth Cause of Action.

VII.

Defendant admits that from July 1, 1941, through October 19, 1945, it delivered to the Dakota Company 5,471,154 kilowatt hours of electric energy, which Defendant alleges was mostly "peak" energy, and that during the said period the Dakota Company delivered to Defendant 49,270,000 kilowatt hours of electric energy, which Defendant alleges was mostly "surplus" or "dump" energy. Defendant denies each and every other of the allegations and legal conclusions of Paragraph VII of Plaintiff's Sixth Cause of Action, and insofar as the conclusions are in reference to the purported meaning of said contract (Exhibit "F" to the Complaint) Defendant asks leave to refer to said instrument.

VIII.

Defendant admits the allegations contained in the first subparagraph of Paragraph VIII of Plaintiff's Sixth Cause of Action.

Defendant denies each and every allegation contained in the second subparagraph of Paragraph VIII of Plaintiff's Sixth Cause of Action. Further answering the allegations contained in said second subparagraph of Paragraph VIII of Plaintiff's Sixth Cause of Action, Defendant realleges and expressly by reference makes a part of its answer to said second subparagraph of Paragraph VIII of Plaintiff's Sixth Cause of Action the allegations contained in each and every Paragraph of its answer to Plaintiff's Third and Fifth Causes of Action.

Defendant denies the allegations contained in the third subparagraph of Paragraph VIII of Plaintiff's Sixth Cause of Action, except that it admits that Defendant received from the Dakota Company transmission line charges pursuant to the Agreement, Exhibit "F", (including the Supplemental Agreement of 1943) the sum of $10,000 covering July 1, 1941 through December 31, 1941 and the further sum of $20,000 for each year of the years 1942, 1943 and 1944, and the further sum of $16,021.51 for the period January 1, 1945, through October 19, 1945.

IX.

Defendant denies each and every allegation contained in Paragraph IX of Plaintiff's Sixth Cause of Action, except that Defendant admits that it paid to the Dakota Company the sum of $218,994.23 for the net energy sold to it by the Dakota Company for the term beginning July 1, 1941 through October 19, 1945, and alleges that said amount so paid was the fair and reasonable value of said electric energy and the agreed and contract price thereof which was fairly arrived at between the parties. Defendant further alleges that the energy sold to it by Dakota Company was, in fact, mostly "dump" or "surplus" energy.

X.

Defendant denies each and every allegation contained in Paragraph X of Plaintiff's Sixth Cause of Action.

XI.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XI of Plaintiff's Sixth Cause of Action and, therefore, denies the same.

XII.

For further answer to Plaintiff's Sixth Cause of Action, Defendant realleges Paragraph XVI of Defendant's answer to Plaintiff's First Cause of Action and hereby incorporates said Paragraph herein and makes it a part of Defendant's answer to Plaintiff's Sixth Cause of Action, except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "F", and the allegations shall be deemed to apply to the appropriate corporations referred to in the Sixth Cause of Action.

Fifth Defense.

Defendant, for further answer to Plaintiff's Complaint and the several causes of action contained therein, alleges:

That Plaintiff under date of August 12, 1946, filed a sworn complaint before the Federal Power Commission wherein Plaintiff alleged at the time of the execution of the originals of said agreements referred to in the Complaint filed herein, the management, operation and policies of all the parties to said agreements were controlled and dominated by the Middle West Corporation. A copy of said sworn complaint is attached hereto and made a part hereof as Defendant's Exhibit 4 to its answer to Plaintiff's Complaint (exhibits are not included inasmuch as Exhibit "A" of the Federal Power Commission case is identical with Exhibit "F" in the present case and Exhibit "B" and "C" are identical in both cases, and Exhibit "D" in the Federal Power Commission case is identical with Exhibit "E" in the present case, and Exhibit "E" in the Federal

Power Commission case is identical with Exhibit "D" in the present case). There is also attached hereto and made a part hereof as Defendant's Exhibit 5 to its answer to Plaintiff's Complaint a copy of an amendment to the aforesaid sworn Complaint (Defendant's Exhibit 4) dated February 19, 1947 and filed by Plaintiff with the Federal Power Commission.

Wherefore, Defendant demands judgment in its favor and against the Plaintiff herein for a dismissal of Plaintiff's Complaint, and the several causes of action contained therein upon the merits and that Plaintiff take nothing by virtue thereof, and for its costs and disbursements herein.

Dated this 17th day of July, 1947.

SYDNEY K. SCHIFF,
231 S. LaSalle Street,
Chicago 4, Illinois,
ROYHL & LONGSTAFF,
MAX ROYHL,
GEORGE E. LONGSTAFF,
National Bank of S. D. Bldg.,
Huron, South Dakota,
RALPH E. MAUCH,
Northwest Security Nat'l
Bank Bldg.,
Huron, South Dakota,
Attorneys for Northwestern
Public Service Company,
Defendant.

Exhibit 1

United States of America
Federal Power Commission

Commissioners:

Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

February 23, 1939

In the Matter of
Northwestern Public Service Company }

Order Allowing Rate Schedule to Take Effect Prior to Date of Filing

It appearing to the Commission that:

(a) On December 23, 1938, the Northwestern Public Service Company filed with the Federal Power Commission its agreement, dated October 7, 1936, with the Northern Power and Light Company, designated in the files of the Commission as Northwestern Public Service Company Rate Schedule F. P. C. No. 3, providing for the interchange of surplus electric energy and emergency service and the rendition of transmission service by the Northwestern Public Service Company for the Northern Power and Light Company;

(b) Northwestern Public Service Company has requested that the said agreement be accepted by the Commission for filing, effective as of January 1, 1936;

(c) Good cause has been shown for, and the public interest will be served by, allowing Northwestern Public Service Company Rate Schedule F. P. C. No. 3 to take effect as of January 1, 1936;

The Commission orders that:

The agreement of October 7, 1936, between the Northwestern Public Service Company and Northern Power and Light Company, as filed with the Commis-

sion on December 23, 1938, and designated as Northwestern Public Service Company Rate Schedule F. P. C. No. 3, be and the same is hereby allowed to take effect as of January 1, 1936.

By the Commission.

LEON M. FUQUAY,
Secretary.

(Seal)

Exhibit 2

United States of America
Federal Power Commission

100-2
R-Contracts

Commissioners:

Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

February 23, 1939.

In the Matter of
Northwestern Public Service Company }

Order Allowing Rate Schedule to Take Effect Prior to Date of Filing.

It appearing to the Commission that:

(a) On December 23, 1938, the Northwestern Public Service Company filed with the Federal Power Commission its agreement, dated January 1, 1938, with the Northern Power and Light Company and the North Dakota Power and Light Company, designated in the files of the Commission as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, providing for the pooling of the generating facilities of these companies to make available to each of the said companies the spare or reserve power of the other companies, and also providing for the interchange of surplus electric

energy and the furnishing of emergency service when needed;

(b) Northwestern Public Service Company has requested that the said agreement be accepted by the Commission for filing, effective as of January 1, 1938;

(c) Good cause has been shown for, and the public interest will be served, by allowing Northwestern Public Service Company Rate Schedule F. P. C. No. 4 to take effect as of January 1, 1938;

The Commission orders that:

The agreement of January 1, 1938, between the Northwestern Public Service Company, the Northern Power and Light Company, and the North Dakota Power and Light Company, as filed with the Commission on December 23, 1938, and designated as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, be and the same is hereby allowed to take effect as of January 1, 1938.

By the Commission.

LEON M. FUQUAY,
Secretary.

Exhibit 3

United States of America
Federal Power Commission

Commissioners:

Leland Olds, Chairman, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

March 31, 1942.

In the Matter of
Northwestern Public Service Company

Order Allowing Rate Schedule to Take Effect

Upon consideration by the Commission of application filed by Northwestern Public Service Company, requesting

that Northwestern Public Service Company Rate Schedule FPC No. 6, providing for the interchange of electric energy with Dakota Public Service Company, be allowed to take effect as of July 1, 1941;

It is ordered that:

(A) The aforesaid rate schedule be and it is hereby allowed to take effect as of July 1, 1941;

(B) The aforesaid rate schedule shall be deemed to have been filed and published in compliance with the Federal Power Act;

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, provision, or condition contained in the contract referred to herein;

(D) This order is without prejudice to any findings or orders which may be made by the Commission in any proceedings now [pendings], or hereafter instituted, by or against the applicant.

By the Commission.

LEON M. FUQUAY,
Secretary.

Exhibit No. 4.

Before the Federal Power Commission
Washington, D. C.

Montana-Dakota Utilities Co., a Delaware corporation, having its principal place of business at 831 Second Avenue South, Minneapolis, Minnesota,

Complainant,

vs.

Northwestern Public Service Company, a Delaware corporation,

Defendant.

(Federal Power Commission August 12, 1946 Received)

Complaint.

Dated August 10, 1946.

John C. Benson and
Armin H. Johnson,
Attorneys for Montana-Dakota Utilities Co., Applicant,
1260 Northwestern Bank Building,
Minneapolis 2, Minnesota.

Faegre & Benson,
Of Counsel.

Comes now the complainant and for its complaint herein alleges:

I.

The complainant is a corporation duly organized and existing under the laws of the State of Delaware and its principal office is located in the City of Minneapolis, Minnesota, and its Post Office address is 831 Second Avenue South, Minneapolis 2, Minnesota, and complainant is duly qualified as a foreign corporation in the States of North Dakota and South Dakota and has been so qualified in the

State of South Dakota ever since the 27th day of June, 1935, and has been so qualified in the State of North Dakota since the 2nd day of July, 1935.

II.

Defendant Northwestern Public Service Company is a corporation organized and existing under the laws of the State of Delaware and qualified to do business in the States of South Dakota and Nebraska and has been so qualified since some time in 1923.

III.

The energy heretofore sold by defendant to complainant and its predecessor under the terms of the original contract and amendment thereto, which original contract and amendment are hereinafter referred to and of which true and correct copies are to this complaint attached as Exhibit "A", and the electric energy to be sold and delivered under the terms of said originals of said Exhibit "A" were sold and transmitted and will be sold and transmitted by defendant to complainant in interstate commerce at wholesale, within the purview of the Federal Power Act, and the electric energy to be sold under the terms of the originals of said Exhibit "A" by complainant to defendant will be sold and transmitted by complainant to defendant in interstate commerce at wholesale, within the purview of the Federal Power Act.

IV.

From the 7th day of March, 1925, to July 1, 1939, Northern Power and Light Company, a Delaware corporation, was duly qualified as a foreign corporation in the State of South Dakota, and from the 22nd day of July, 1926, to July 1, 1939, said corporation was duly qualified as a foreign corporation in the State of North Dakota, and operated an electric public utility in said States, consisting of generating stations and transmission lines and other usual facilities of an electric public utility, and during said period said Northern Power and Light Company, in the operation of said public utility business in said State, had generating stations for the purpose of generating electric

energy at Mobridge, Lemmon and Gettysburg, South Dakota, and Ellendale, North Dakota, which were connected to and furnished electric energy to transmission lines by which said Northern Power and Light Company transmitted such electric energy and other electric energy hereinafter referred to to the following cities and villages in the State of South Dakota, viz., Mobridge, Eureka, Gettysburg, Ipswich, Lemmon, McIntosh, Selby, Akaska, Artas, Bowdle, Frederick, Glenham, Greenway, Herried, Hillsview, Hosmer, Hoven, Keldron, [Labanaon], Leola, McLaughlin, Morristown, Mound City, Onaka, Pollock, Roscoe, Seneca, Thunderhawk, Tolstoy, Watauga, Wetonka and Winship, and the following cities and villages in the State of North Dakota, viz., Ashley, Ellendale, Steele, Wishek, Braddock, Burnstad, Dawson, Driscoll, Forbes, Fredonia, Fullerton, Hague, Hazelton, Kintyre, Kulm, Lehr, Merricourt, Monango, Napoleon, Selfridge, Tappen, Venturia, Zelland and Strasburg, and such energy was during all of said time sold by said Northern Power and Light Company to the public at retail in said cities and villages.

V.

From the 29th day of December, 1925, to the 1st day of July, 1939, North Dakota Power & Light Company was Delaware corporation duly qualified as a foreign corporation in the State of North Dakota and operated an electric public utility, consisting of generating stations and transmission lines and other usual facilities of an electric public utility, having its generating stations in Beulah, Bismarck, Mandan, Dickinson and Mott, North Dakota, and serving by said generating stations, transmission lines and other facilities the cities and villages of Bismarck, Mandan, Beulah, Glen Ullin, Hazen, Mott, New Salem, Almont, Bentley, Burt, Carson, Center, Elgin, Heil, Judson, Leith, McKenzie, New Leipzig, Regent, Stanton, Sterling, Zap, Dickinson, Hebron, Belfield, Dodge, Dunn Center, Gladstone, Golden Valley, Halliday, Killdeer, Richardton, South Heart, Taylor and Werner in the State of North Dakota.

VI.

On the 1st day of July, 1939, the aforesaid Northern Power and Light Company and North Dakota Power & Light Company, pursuant to the laws of the State of Delaware, merged into one corporation, North Dakota Power & Light Company being the surviving corporation pursuant to the terms of said merger, and changing its name in said merger proceedings to Dakota Public Service Company. Pursuant to the terms of said merger, Dakota Public Service Company became the owner of all of the public utility business of said Northern Power and Light Company in addition to the properties on the date of said merger owned by North Dakota Power & Light Company, and thereafter said Dakota Public Service Company owned and operated as a public utility the properties formerly owned by it as hereinbefore alleged and the properties on the date of said merger owned by Northern Power and Light Company.

VII.

On the 19th day of October, 1945, Dakota Public Service Company aforesaid duly transferred, sold and assigned to complainant all of the generating stations, transmission lines, distribution systems, franchises, contracts and other assets then owned by Dakota Public Service Company and that certain contract and the amendment attached thereto, of which contract and amendment a true and correct copy is hereto attached, marked Exhibit "A" and by reference made a part hereof, and ever since said date complainant has been and still is the owner of the aforesaid property transferred to it by Dakota Public Service Company and the owner of said contract, and has been performing said contract as the assignee and successor of Dakota Public Service Company. Said contract, which will be hereinafter referred to as Exhibit "A", was filed with the Federal Power Commission on the 28th day of February, 1942, as Northwestern Public Service Company's Schedule F. P. C. No. 6.1. On the 22nd day of February, 1945 Dakota Public Service Company filed with the Federal Power Commission Dakota Public Service Company's Schedule F. P. C. No. 4, being its concurrence in Northwestern Public Service Company's Schedule F. P. C. No. 6, and on the 22nd day of

February, 1945, duly filed with the Federal Power Commission Dakota Public Service Company's Schedule Supplement No. 1 to F. P. C. No. 4, being a concurrence in the amendment to said Exhibit "A".

VIII.

On the 7th day of October, 1936, the defendant and Northern Power and Light Company made and entered into a contract denominated an interconnection contract, a true and correct copy thereof being hereto attached, marked Exhibit "B" and by reference made a part hereof. At the time of the execution of the original of said Exhibit "B", F. E. Kruesi, who executed said agreement for defendant as President of Defendant, and C. L. Sanstedt, who executed the original of Exhibit "B" as Secretary of Northwestern Public Service Company and Secretary of Northern Power and Light Company were respectively President and Secretary of Northern Power and Light Company, and C. J. Strike, who executed the original of said Exhibit "B" as Vice-President of Northern Power and Light Company, was Vice-President of Northwestern Public Service Company, and at said time the Directors of Northwestern Public Service Company were F. E. Kruesi, C. L. Sanstedt, C. J. Strike, J. F. Buckmier and G. R. McArthur, and at said time the Directors of Northern Power and Light Company were said Kruesi, Strike, Sanstedt and Buckmier, being the same individuals as the Directors of Northwestern Public Service Company. At the time of the execution of the original of said Exhibit "B", Northwestern Public Service Company was owned, controlled and dominated, directly or indirectly, by The Middle West Corporation, a holding company. through the ownership of stock by a subsidiary or subsidiaries of The Middle West Corporation and the domination of Northwestern Public Service Company's Directors, officers and employees by The Middle West Corporation, which also in essentially the same manner and method dominated and controlled the affairs of Northern Power and Light Company.

IX.

On the 1st day of January, 1938, defendant and North Dakota Power & Light Company aforesaid and Northern Power and Light Company aforesaid made and entered into a so-called interchange capacity agreement, of which a true and correct copy is hereto attached, marked Exhibit "C" and hereby made a part hereof.

At the time of the execution of the original of Exhibit "C", J. F. Buckmier, who executed said original of Exhibit "C", as Secretary on behalf of all three companies executing said agreement, was Secretary of each of said companies and was a Director of each of said companies, and A. B. Sanborn, who executed the original of Exhibit "C" as President of Northwestern Public Service Company, was at said time also President of said North Dakota Power & Light Company and was President of said Northern Power and Light Company, and at the time of the execution of the original of Exhibit "C", C. L. Sanstedt, who executed said original as Vice President of North Dakota Power & Light Company, was Vice-President of Northwestern Public Service Company and Vice President and Treasurer of Northern Power and Light Company, and said G. R. McArthur, who executed the original of Exhibit "C" as President of Northern Power and Light Company, was at said time Vice President of said Northwestern Public Service Company and Vice President of said North Dakota Power & Light Company, and at the time of the execution of the original of said Exhibit "C" the Directors of Northwestern Public Service Company were said A. B. Sanborn, G. R. McArthur, C. O. Sanstedt, J. F. Buckmier and B. L. Palm, and the Directors of said North Dakota Power & Light Company were A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier, and S. W. White and the Directors of Northern Power and Light Company were said A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier and S. W. White, and at the time of the execution of the original of said Exhibit "C" the management, operation and policies of all of the parties to said Exhibit "C" were controlled and dominated by a holding company, the aforesaid The Middle West Corporation, and continuously during the life of the original of

said Exhibit "C" the Committee on Operations referred to in said agreement was dominated and controlled and under the supervision and direction of the holding company, The Middle West Corporation.

X.

On the 1st day of July, 1939, said Northwestern Public Service Company and said Dakota Public Service Company made and entered into a so-called interchange capacity agreement, of which a true and correct copy is hereto attached, marked Exhibit "D" and by reference made a part hereof, and at the time of the execution of the original of said Exhibit "D" said A. B. Sanborn, who executed said original as President of Northwestern Public Service Company, was President of Dakota Public Service Company, and said C. L. Sanstedt, who executed said original as Vice President of Dakota Public Service Company was Vice President of Northwestern Public Service Company and at said time the Board of Directors of Northwestern Public Service Company was said A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier, W. J. Allen, W. S. Fantle and O. C. Stokke, and the Board of Directors of Dakota Public Service Company was the said Sanborn, McArthur, Sanstedt, Buckmier and S. W. White, and at said time both of the parties to said agreement were dominated and controlled and their directors, officers and employees were dominated and controlled by the said holding company, The Middle West Corporation. Said contract, the original of Exhibit "D", continued in force and effect until superseded by Exhibit "A" and during the time of said existence of said contract, the original of Exhibit "D", the Committee on Operations referred to in said agreement was dominated and controlled and under the supervision and direction of the holding company, The Middle West Corporation, and complainant is informed and believes that the said S. W. White never attended any of the meetings of the Board of Directors of said Dakota Public Service Company.

XI.

On the 1st day of July, 1939, said Northwestern Public Service Company and said Dakota Public Service Com-

pany made and entered into a so-called interconnection contract, of which a true and correct copy is hereto attached, marked Exhibit "E" and by reference made a part hereof, and at the time of the execution of the original of said Exhibit "E", A. B. Sanborn, who executed said original as President of Northwestern Public Service Company, was President of Dakota Public Service Company, and C. L. Sanstedt, who executed said original as Vice-President of Dakota Public Service Company, was Vice-President of Northwestern Public Service Company, and at said time the Board of Directors of Northwestern Public Service Company was A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier, W. J. Allen, W. S. Fantle and O. C. Stokke and the Board of Directors of the Dakota Public Service Company was the said Sanborn, McArthur, Sanstedt, Buckmier and S. W. White, and at said time both of the parties to said agreement were dominated and controlled and their directors, officers and employees were dominated and controlled by the said holding company, The Middle West Corporation.

XII.

On the 1st day of July, 1941, said Northwestern Public Service Company and said Dakota Public Service Company made and entered into an agreement cancelling the originals of Exhibits "D" and "E" and restating the charges to be made for the services and energy furnished by the parties thereto and changing and restating the obligations of Northwestern Public Service Company and Dakota Public Service Company as they heretofore existed under the originals of said Exhibits "D" and "E", and a true and correct copy of the said agreement made the 1st day of July, 1941, is hereto attached, marked Exhibit "A" and by reference made a part hereof. On said 1st day of July, 1941, A. B. Sanborn, who executed the original of Exhibit "A" as President of Northwestern Public Service Company, was also President of Dakota Public Service Company, and C. L. Sanstedt, who executed said original as Vice-President of Dakota Public Service Company, was also Vice-President of Northwestern Public Service Company and J. F. Buckmier, who attested said original as

Secretary of Northwestern Public Service Company, was also Secretary of Dakota Public Service Company, and Ralph Mauch, who attested said original as Assistant Secretary of Dakota Public Service Company, was also Assistant Secretary of Northwestern Public Service Company, and on said 1st day of July, 1941, the Board of Directors of Northwestern Public Service Company was said A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier, W. J. Allen, W. S. Fantle and O. C. Stokke, and the Board of Directors of Dakota Public Service Company was said Sanborn, McArthur, Sanstedt, Buckmier and S. W. White, and at said time both of the parties to said agreement were dominated and controlled and their directors, officers and employees were dominated and controlled by the said hoding company, The Middle West Corporation.

XIII.

At the time of the execution of the original of the supplemental agreement attached to said Exhibit "A" and made March 13, 1943, A. B. Sanborn, who executed said supplemental agreement as President of Northwestern Public Service Company, was also President of Dakota Public Service Company, and C. L. Sanstedt, who executed said supplemental agreement as Vice-President of Dakota Public Service Company, was also Vice-President of Northwestern Public Service Company, and J. F. Buckmier, who attested said supplemental agreement as Secretary of Northwestern Public Service Company, was also Secretary of Dakota Public Service Company, and Margaret Frost, who attested said supplemental agreement as Assistant Secretary of Dakota Public Service Company, was also Assistant Secretary of Northwestern Public Service Company, and on said 13th day of March, 1943, the Directors of Northwestern Public Service Company were the said A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier, W. J. Allen, W. S. Fantle and O. C. Stokke and the Board of Directors of Dakota Public Service Company was said Sanborn, McArthur, Sanstedt, Buckmier and S. W. White, and at said time both of the parties to said supplemental agreement were dominated and controlled and their directors, officers and employees were dominated and con-

trolled by the said holding company, The Middle West Corporation.

XIV.

During all of the times subsequent to July 1, 1941, and the date when complainant herein acquired the properties, assets and contracts of Dakota Public Service Company, as hereinbefore alleged, the operating committee provided for in the original of said Exhibit "A" was dominated and controlled and under the supervision and direction of the aforesaid holding company, The Middle West Corporation.

XV.

On the first day of July, 1939, said Dakota Public Service Company and defendant made and entered into a management contract, of which a true and correct copy is hereto attached, marked Exhibit "F" and by reference made a part hereof, and at the time of the execution of the original of said Exhibit "F" A. B. Sanborn, who executed said original as President of Northwestern Public Service Company, was President of Dakota Public Service Company, and C. L. Sanstedt, who executed said original as Vice-President of Dakota Public Service Company, was also Vice-President and Treasurer of Northwestern Public Service Company, and at said time the Board of Directors of Northwestern Public Service Company was said A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier, W. J. Allen, W. S. Fantle and O. C. Stokke, and the Board of Directors of Dakota Public Service Company was the said A. B. Sanborn, G. R. McArthur, C. L. Sanstedt, J. F. Buckmier and the aforesaid S. W. White, and at said time both of the parties to said agreement were dominated and controlled and their directors, officers and employees were dominated and controlled by the said holding company, The Middle West Corporation.

XVI.

At the time of the execution of all of the originals of the exhibits hereto attached and during the life of all of said agreements and until the time of the acquisition of the properties, assets and contracts of Dakota Public Service

Company by Montana-Dakota Utilities Co., as hereinabove alleged, all of the officers of defendant and of Dakota Public Service Company were identical and the dominating members of the Boards of Directors of the corporations, parties to the originals of said exhibits, were identical and said common officers and common directors received all their compensation for services from Northwestern Public Service Company.

XVII.

On the 28th day of February, 1946, Montana-Dakota Utilities Co. terminated the aforesaid management contract. On the 27th day of February, 1946, Montana-Dakota Utilities Co. served on the defendant notice of termination of said agreement Exhibit "A" and the supplement thereto attached and the said agreement will terminate on the 31st day of August, 1947.

XVIII.

On the 15th day of January, 1946, complainant, pursuant to the terms of said Exhibit "A", executed the supplement to the interchange capacity agreement as the basis for billing for the reserve capacity charges as provided in said Exhibit "A" and then for the first time since July 1, 1939, the following credit was given for generating capacity which was in existence at said time on properties conveyed by Dakota Public Service Company to the complainant, viz., 270 KW of steam generating capacity at Mandan, North Dakota, and 86 KW of steam generating capacity at Dickinson, North Dakota, although said generating capacity had been in existence and in the same or better condition during all previous years during the existence of the original of Exhibit "A".

XIX.

Complainant is informed and believes and on such information and belief alleges that the generating capacity of the Aberdeen generating station of the defendant is substantially below the figure used in computing the reserve generating capacity of the respective parties to said original of Exhibit "A".

XX.

The complainant is informed and believes and on such information and belief alleges that the transmission lines referred to in Exhibit "A" and for which monthly charge is made under the terms of said Exhibit "A" and toward the cost of which complainant is required under the terms of Exhibit "A" to pay a substantial portion were built by defendant in 1930, primarily for its own use, and have been continuously used by defendant in its business since said time.

XXI.

The average present cost to complainant of the generation of the current furnished and to be furnished to defendant by complainant is not less than 5.8 mills per kilowatt hour at its power plants, exclusive of depreciation, taxes and interest, whereas the rate therefor to be paid to complainant at its metering points under the terms of Exhibit "A" is only 5 mills.

XXII.

The rates and charges exacted from complainant by defendant pursuant to the terms of the original of said Exhibit "A" are unjust and unreasonable and complainant should not be required under the circumstances set forth in this complaint to pay to defendant anything on account of the transmission line amortization provided for in said Exhibit "A", or anything on account of the capacity of the Aberdeen generating station in excess of approximately 6,000 KW capacity, and should be paid by the defendant not less than 6½ mills per kilowatt hour for all energy furnished by complainant to defendant.

XXIII.

Complainant does not have access to the books and records of defendant and therefore cannot at this time advise this Commission of the cost of the transmission lines for which a charge is made to complainant under the terms of the original of Exhibit "A" and cannot at this time advise this Commission as to the true capacity of the

generating stations of defendant or furnish to this Commission the other data necessary to show the exact extent of the unjustness and unreasonableness of all of the charges made against complainant under the terms of the original of said Exhibit "A".

XXIV.

The defendant has each year since the making of the original of Exhibit "A" received many times more energy from complainant over the transmission lines referred to in Exhibit "A" than complainant has received from defendant, and complainant attaches hereto as Exhibit "G" a record of power transactions between Dakota Public Service Company and complainant on the one hand and Northwestern Public Service Company on the other for the years 1940 through the month of June, 1946.

XXV.

The terms of the Federal Power Act do not provide for reparations for unreasonable charges and rates paid by complainant prior to a decision herein and under the terms of said original of Exhibit "A" complainant is paying large amounts each month in excess of just and reasonable rates and charges.

Wherefore, complainant prays that defendant be immediately served with a copy of this complaint and that a hearing herein be held promptly after defendant's time for answer has expired, and that this Commission determine reasonable rates and charges to be made by the parties to said original of Exhibit "A" for the services rendered by them respectively, and make such final and inferim orders as may be required to secure to complainant just and reasonable rates for the energy and services contemplated by the original of Exhibit "A" to this complaint.

MONTANA-DAKOTA UTILITIES CO.,
By JOHN C. BENSON,
ARMIN M. JOHNSON,
Its Attorneys.
1260 Northwestern Bank Building,
Minneapolis 2, Minnesota.

State of Minnesota }
County of Hennepin } ss.

Cecil W. Smith, being first duly sworn, deposes and says that he is the Vice-President of Montana-Dakota Utilities Co., the complainant in the attached and foregoing complaint and that he has read the same and knows the contents thereof and that the same are true to the best of his knowledge and belief.

CECIL W. SMITH.

Subscribed and sworn to before me this 10th day of August, 1946.

MARGARET V. DOYLE,
Notary Public, Hennepin County, Minn.
Residing at Minneapolis, Minn.
My Commission Expires April 9, 1947.

(Notarial Seal)

Exhibit 5.

Before the Federal Power Commission
Washington, [C]. C.

Montana-Dakota Utilities Co., a Delaware corporation, having its principal place of business at 831 Second Avenue South, Minneapolis, Minnesota, Complainant, vs. Northwestern Public Service Company, a Delaware corporation, Defendant.	Docket No. IT-6004.

Amendment to and Supplement to Complaint.

Dated February 19, 1947.

John C. Benso : and
Armin M. Johnson,
Attorneys for Montana-Dakota
Utilities Co., Complainant,
1260 Northwestern Bank Building,
Minneapolis 2, Minnesota.

Faegre & Benson,
Of Counsel.

Comes now the complainant, Montana-Dakota Utilities Co., and amends and supplements its Complaint herein in the following particulars, to-wit:

By amending paragraph XXII of said Complaint so that, as amended, said paragraph will read as follows:

"XXII.

The rates and charges exacted from complainant by defendant pursuant to the terms of the original of said Exhibit 'A' are unjust and unreasonable and complainant should not be required to pay to defendant

anything on account of the transmission line amortization provided for in said Exhibit 'A' or anything on account of 'Company Reserve Capacity Charge' as provided in Section 1 of Article V of said Exhibit 'A', and should be paid by defendant not less than 6½ mills per kilowatt hour for all energy furnished by complainant to defendant."

By adding to said Complaint, after paragraph XXV thereof, the following paragraphs, to-wit:

"XXVI.

During the time the officers and directors of Northwestern Public Service Company managed the affairs of Northern Power and Light Company, North Dakota Power & Light Company and Dakota Public Service Company, as hereinbefore in this Complaint alleged, said officers and directors failed and neglected to install sufficient generating capacity on the systems of said companies to make the systems of said companies independent of defendant for energy required by said systems in times other than emergencies, and so handled the construction and installation of defendant's generating and distribution systems as to give defendant an excess of generating capacity over defendant's peak demands, all of said conduct resulting in making said properties of said Northern Power and Light Company, North Dakota Power & Light Company and Dakota Public Service Company dependent frequently on peak loads and frequently during emergencies on defendant for energy. Promptly after complainant acquired the aforesaid properties of Dakota Public Service Company, as hereinbefore in this Complaint alleged, complainant made plans for and ordered generating units to enable said properties to meet their then growing demand independent of defendant except in emergencies.

XXVII.

When defendant's officers and directors made and caused Dakota Public Service Company to make the agreement now filed with the Federal Power Commission as Northwestern Public Service Company

Supplement 1 to Rate Schedule F. P. C. No. 6, there was inserted in said supplement and is now contained therein, as shown by Exhibit 'A' attached hereto, the following paragraph:

> 'This Agreement will become effective on July 1, 1941, and shall continue thereafter unless and until terminated by written notice by registered mail from either party to the other party terminating the agreement. The Agreement may be terminated only at the end of a calendar month and the written notice shall precede the termination dated by not less than 18 months.'

XXVIII.

On the 27th day of February, 1946, complainant wrote defendant as follows:

> 'In accordance with the Agreement between Northwestern Public Service Company and Dakota Public Service Company, dated as of July 1, 1941, and a Supplemental Agreement dated March 13, 1943 between these two companies, as provided in Article II, Section 1, as amended, notice is hereby given by Montana-Dakota Utilities Co., as successor to Dakota Public Service Company, of the termination of that Agreement, such termination shall be effective as of August 31, 1947.'

but complainant has never applied to this Commission for any authority to make ~~said termination~~ effective.

XXIX.

Complainant is informed and believes that on about the 18th day of January, 1947, defendant filed with the aforesaid Commission a certain document entitled 'Notice of Cancellation', reading as follows:

> 'Notice is hereby given that effective the 31st day of August, 1947, Rate Schedule F. P. C. No. 6, together with Supplement No. 1 and Exhibits "C", "D", "E", and "F", effective date July 1, 1941 and filed with the Federal Power Commission by Northwestern Public Service Company, Huron, South Dakota is to be cancelled pursuant to Notice

of Termination dated February 27, 1946 signed by R. M. Heskett, President of Montana-Dakota Utilities Co., copy of which is hereto attached marked Exhibit "A", and which was served on the undersigned by Registered Mail on February 28, 1946.'

That the Notice of Termination referred to in said Notice of Cancellation is the letter hereinbefore set forth in paragraph XXVIII of this Complaint.

XXX.

To provide the generating capacity for the energy demands on the property of Dakota Public Service C apany, hereinbefore in this Complaint referred to, so that the failure of defendant and its officers and directors to install sufficient generating capacity therefor may be cured and to take care of the increasing energy demand by the consumers served by said property, complainant is now engaged in a program of installing generating capacity on said property as follows, to-wit: 3500 kw of diesel powered generators at Ellendale, North Dakota, and 3500 kw of diesel powered generators at Mobridge, South Dakota, and 5,000 kw of steam powered generators at Bismarck, North Dakota, and for the same purposes complainant is engaged in a program of constructing high tension power lines to make available to the aforesaid properties 5,000 kw of power to be purchased by complainant from the United States Bureau of Reclamation.

XXXI.

Complainant is advised and believes that the aforesaid installations and building of power lines referred to in paragraph XXX hereinbefore will not be completed before November 1, 1947, and complainant is informed and believes that it is to the interests of complainant and defendant and to the interest of the public served by complainant and defendant to have the existing or equally efficient and strategically located interconnections of facilities maintained between the properties of defendant and the property formerly owned by Dakota Public Service Company,

and that to sever said interconnections would be to the damage and detriment of the consumers on both of the properties in this paragraph referred to and would be against public interest inasmuch as the maintenance of said interconnection facilities will enable the interchange of power between said properties when line trouble or plant trouble or the installation of repairs or the reconditioning of generating units requires that one of said properties be supplied with energy from a source outside of such property, and it is not in the public interest or within the policy of the Federal Power Act under such conditions as these pleadings disclose to have existing interconnection facilities dismantled or otherwise made unavailable for emergency or other service.

During the last several months complainant has found it necessary to purchase from the defendant large amounts of electric energy in order to adequately serve the consumers on complainant's properties hereinabove referred to, and it will be necessary for complainant to purchase large amounts of electric energy for said purposes until at least the 1st day of November, 1947.

By amending the prayer for relief in said Complaint by adding thereto a second paragraph to read as follows:

'For an order of the Commission ordering the parties, until further order of the Commission, to maintain the interconnection facilities referred to in complainant's Complaint, or such portion thereof as the Commission shall find necessary in the public interest, and fixing the rates for power which may hereafter be interchanged by the parties during the maintenance of the aforesaid interconnection facilities between the parties mentioned in this Complaint.' "

MONTANA-DAKOTA UTILITIES CO.,
By JOHN C. BENSON and
ARMIN M. JOHNSON,
Its Attorneys.
1260 Northwestern Bank Building,
Minneapolis 2, Minnesota.

State of Minnesota }
County of Hennepin } ss.

Cecil W. Smith, being first duly sworn, deposes and says that he is the Vice President of Montana-Dakota Utilities Co., the complainant in the attached and foregoing Amendment to and Supplement to the Complaint herein, that he has read the same and knows the contents thereof and that the same are true to the best of his knowledge and belief.

CECIL W. SMITH,

Subscribed and sworn to before me this 19th day of February, 1947.

AGNES M. SMITH.

(Notarial Seal)

Agnes M. Smith,
Notary Public, Hennepin County, Minn.,
Residing at Minneapolis, Minn.,
My Commission Expires Aug. 10, 1950.

I hereby certify that I have this day served the foregoing Amendment To And Supplement To the Complainant's Complaint upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to Sydney K. Schiff, Esq., 231 South LaSalle Street, Chicago 4, Illinois, Max Royhl, National Bank of South Dakota Building, Huron, South Dakota, and Ralph Mauch, Security National Bank Building, Huron, South Dakota, Attorneys for Defendant, and to Messrs. Pam, Hurd & Reichmann, Querin P. Dorschel, Esq., Fredric H. Stafford, Esq., and John B. Robinson, Jr., Esq., 231 South LaSalle Street, Chicago 4, Illinois, of Counsel for Defendant.

Dated at Minneapolis, Minnesota, this 19th day of February, 1947.

JOHN C. BENSON,
Attorney for Montana-Dakota Utilities Co.,
1260 Northwestern Bank Building,
Minneapolis 2, Minnesota.

Faegre & Benson
Of Counsel.

(Indorsed)--Filed July 21, 1947. Roy B. Marker, Clerk. By Helen S. Lambert, Deputy.

Amendment to Answer of Defendant.

United States District Court
District of South Dakota
Western Division

Montana-Dakota Utilities Co., a corporation, Plaintiff,

vs.

Northwestern Public Service Company, a corporation, Defendant.

Civil Action File No. 241 W.

Now comes Defendant, Northwestern Public Service Company, and amends its Answer to the Complaint heretofore filed by it herein in the following respects:

I.

Paragraph III under the Third Cause of Action under the Fourth Defense contained in said Answer is hereby deleted and in lieu thereof the following paragraph is hereby substituted, to be and read as follows:

"III.

"For answer to Paragraph III of Plaintiff's Third Cause of Action, Defendant admits that pursuant to Order No. 36 of the Federal Power Commission Defendant filed with said Commission its Northwestern Public Service Company Rate Schedule F. P. C. No. 1, a true and correct copy of which is attached to the Complaint herein marked Exhibit "A-1", but denies that said Rate Schedule was filed on February 7, 1937, and alleges the fact to be that said Rate Schedule was filed on February 7, 1936. Further answering the allegations contained in Paragraph III of Plaintiff's Third Cause of Action, Defendant admits that it entered into an Agreement, dated January 1, 1938, with Northern Company and North Dakota Company; denies that Defendant caused the Northern Company and the North Dakota Company, or either of them, to make and enter into said Agreement, by and through the directors and officers of Defendant as alleged in said Paragraph III or otherwise or at all; further denies that said Agreement was entered into for the benefit of Defendant and to the detriment of the Northern

Company and the North Dakota Company and alleges the fact to be that the primary benefit resulting from said Agreement was for the benefit of said Northern Company and North Dakota Company; and further denies that the requirements of Section 205 (d) of the Federal Power Act were not complied with, and alleges the fact to be that said Agreement dated January 1, 1938 (Exhibit "C" to the Complaint) was by Defendant filed with the Federal Power Commission on December 23, 1938, and thereafter and for good cause shown said Federal Power Commission on February 23, 1939, entered its order that said Agreement, Exhibit "C", dated January 1, 1938, and designated therein as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, be allowed to take effect as of January 1, 1938 and that a true and correct copy of said order so entered by the Federal Power Commission is attached to this Answer and made a part hereof as Exhibit No. 2; except as hereinbefore in this Paragraph admitted, alleged or stated, denies each and all of the allegations contained in said Paragraph III of Plaintiff's Third Cause of Action."

II.

In the Fifth Defense contained in said Answer a new paragraph is hereby inserted as the third paragraph in said Fifth Defense, said paragraph to be and read as follows:

"On or about September 4, 1947, the Federal Power Commission entered and issued its order which provided, among other things, that the complaint and the amendment thereto filed by Plaintiff (Exhibits 4 and 5 to this Answer) be dismissed and which dismissed both said complaint and said amendment thereto."

SYDNEY K. SCHIFF,
ROYHL & LONGSTAFF,
MAX ROYHL,
GEORGE E. LONGSTAFF,
RALPH E. MAUCH,
Attorneys for Defendant.
By MAX ROYHL.

(Indorsed)—Filed Feb. 9, 1948. Roy B. Marker, Clerk.

Amendment No. 2 to Answer.

Defendant supplementing its answer herein and as a part thereof and as its Sixth Defense to plaintiff's complaint pleads as follows:

Sixth Defense.

Further answering and for further and separate defense defendant alleges that the plaintiff on or about the 2nd day of July, 1945, entered into an agreement in writing with United Public Utilities Corporation, a Delaware corporation, of Chicago, Illinois, for the purchase from that corporation of all of the stock and other securities of the Dakota Company and pursuant thereto on or about October 19, 1945, plaintiff did pay the consideration provided in said contract and acquire and accept delivery of all of the stock and securities of the Dakota Company, and on the same date plaintiff did surrender and exchange said stock and securities to be cancelled by the Dakota Company and received in consideration therefor from the Dakota Company in complete liquidation certain of its assets and property, and that it is by virtue of such procedure that plaintiff claims to have acquired rights and property made the basis of the claims and demands of the plaintiff herein, and that it is by virtue of said transactions that plaintiff claims under and relies upon said assignment alleged in the several causes of action in the complaint herein, and that said assignment was made in consideration of and for the purpose of carrying out the plan and scheme for liquidating the Dakota Company, and for the purpose and with the intent of acquiring its assets, and that plaintiff well knew of all of the contracts, agreements, arrangements and relationships of which it now complains and which it makes the basis of its claims herein, prior to the purchase of the said stock and securities of the Dakota Company and that plaintiff had no financial interest whatever in the Dakota Company prior to the said contract of purchase with United Public Utilities Corporation; and that the matters and things of which plaintiff complains all occurred and took place prior to the acquisition of any interest by plaintiff in the Dakota Company or its stock or securities; and that to permit the plaintiff to recover herein

would unjustly enrich the plaintiff and permit it to recover amounts reducing its purchase price paid for the said stock and securities contrary to the spirit and intent of the sale so made and would be unjust and inequitable for the reasons that plaintiff had and could acquire no rights on account of occurrences antedating plaintiff's purchase of said stock and could not be damaged thereby, and plaintiff after full knowledge of the facts, contracts and arrangements nevertheless purchased the said stock and securities to obtain the assets of the Dakota Company and did so obtain the same and may not now demand more than bargained for, and may not recover in this action.

Wherefore, defendant prays for the dismissal of plaintiff's complaint and the several causes of action contained therein upon the merits and that plaintiff take nothing by virtue thereof and for defendant's costs and disbursements herein.

Dated February 9, 1948.

MAX ROYHL,
Huron, South Dakota,
RALPH MAUCH,
Huron, South Dakota,
FREDRIC H. STAFFORD,
Chicago, Illinois,
JOHN B. ROBINSON, JR.,
Chicago, Illinois,
M. T. WOODS,
Sioux Falls, South Dakota,
Attorneys for Defendant.

(Indorsed)—Filed Feb. 9, 1948. Roy B. Marker, Clerk.

(Amendment to Complaint)

In the District Court of the United States
For the District of South Dakota
Western Division

Montana Dakota Utilities Co., a Corporation, Plaintiff, vs. Northwestern Public Service Company, a Corporation, Defendant.	Civil No. 241, W. D. Amendments to Complaint, Pursuant to Foregoing Stipulation.

Plaintiff alleges:

For a seventh cause of action:

I.

Realleges and expressly, by reference, makes parts of this cause of action the allegations contained in Paragraphs I, II, III, IV, V, VI, VII, VIII, set forth in plaintiff's first cause of action.

II.

As of the 2nd day of January, 1936, the defendant, through its Board of Directors and officers then in office as in this complaint alleged, caused said Northern Power and Light Company to make a contract with the defendant entitled "Agreement for allocation of joint management expenses", of which a true and correct copy is hereto annexed, marked Exhibit "G" and expressly by reference made a part hereof. Said contract, of which Exhibit "G" is a copy, was never filed with the Federal Power Commission as a rate agreement or as an agreement affecting any rate or charge for electrical energy or the transmission thereof, although said agreement and the exaction by defendant of payments thereunder from said Northern Power and Light Company did affect the rates and charges collected by the defendant from said Northern Power and Light Company under Exhibit "B" to this complaint attached. Defendant, pursuant to the terms of the original

of said Exhibit "G", charged said Northern Power and Light Company and caused it to pay to defendant for the period from the 1st day of January, 1936, to the 1st day of July, 1939, the sum of Two Thousand, six hundred fifty-two and 25/100th Dollars, ($2,652.25) for dispatcher's salaries and expenses and during said period said dispatchers' services for which said charges were made consisted, among other things, of controlling the flow of energy exchanged under the terms of the original of Exhibit "B" to this complaint.

For an eighth cause of action:

I.

Realleges and expressly, by reference, makes part of this cause of action the allegations contained in Paragraph I of the second cause of action herein, and alleges that from the 1st day of September, 1935 to July 1, 1939, the defendant, through its officers and directors, who were officers and directors in common with Northern Power and Light Company and North Dakota Power & Light Company, caused said North Dakota Power and Light Company to generate in the State of North Dakota and transmit to Northern Power and Light Company at Keldron, South Dakota and at Driscoll, North Dakota, electrical energy that was in turn, by Northern Power and Light Company transmitted to defendant at Gettysburg, Barnard, Ipswich, and Aberdeen, South Dakota, and at said points purchased for resale by defendant, and that the amount of said energy that was so generated by North Dakota Power & Light Company was not less than 12,550,381 Kilowatt Hours.

II.

As of the 2nd day of January, 1936, defendant, through its Board of Directors and officers then in office as in this complaint alleged, caused said North Dakota Power & Light Company to make a contract with defendant entitled "Agreement for allocation of joint management expenses", of which a true and correct copy is hereto annexed, marked Exhibit "G" and expressly by reference made a part hereof. Said contract was never filed with the Federal Power Commission as a rate agreement or as an agreement affecting any rate or charge for electrical energy or

the transmission thereof, although said agreement and the exaction by defendant of payments thereunder from said North Dakota Power & Light Company did affect the rates and charges at which defendant had caused said North Dakota Power and Light Company to sell electrical energy to Northern Power and Light Company as in this cause of action alleged. Defendant, pursuant to the terms of the original of said Exhibit "G", charged said North Dakota Power & Light Company and caused it to pay to defendant for the period from January 1, 1938, to July 1, 1939, the sum of One Thousand Nine Hundred and 89/100ths Dollars, ($1900.89) for dispatchers' salaries and expenses and during said period said dispatchers' services for which said charge was made consisted, among other things, of controlling the flow of the energy from North Dakota Power & Light Company which this complaint alleges was sold by North Dakota Power & Light Company to Northern Power and Light Company and by that Company to defendant.

For a ninth cause of action,

I.

Realleges and expressly, by reference, makes parts of this cause of action the allegations contained in Paragraphs I, II, III, and IV of plaintiff's fourth cause of action, and alleges that pursuant to the terms of the contract dated July 1, 1939, alleged in said fourth cause of action, said Dakota Public Service Company paid to the defendant large sums of money as set forth in said fourth cause of action for the purposes therein alleged, and delivered to the defendant kilowatt hours of electrical energy as set forth in said cause of action.

II.

As of the 1st day of July, 1939, the defendant, through its Board of Directors and officers then in office as in this complaint alleged, caused Dakota Public Service Company to make a contract with defendant entitled "Agreement for allocation of joint management expenses", of which a true and correct copy is hereto annexed, marked Exhibit "H" and expressly by reference made a part hereof. Said contract was never filed with the Federal Power Commission as a rate agreement or as an agreement affecting any rate or charge for electrical energy or the transmission

thereof, although said agreement and the exaction by defendant of payments thereunder from said Dakota Public Service Company did affect the rates and charges collected by the defendant from said Dakota Public Service Company under the original of said Exhibit "D" to this complaint. Defendant, pursuant to the terms of the original of said Exhibit "H", charged said Dakota Public Service Company and caused it to pay to defendant for the period from July 1, 1939 to July 1, 1941, the sum of Four Thousand, Four Hundred and Twenty-three and 88/100 Dollars ($4,423.88) for dispatchers' salaries and expenses and during said period said dispatchers' services for which said charge was made consisted, among other things, of controlling the flow of energy exchanged under the terms of said Exhibit "D" to this complaint.

For a tenth cause of action herein,

I.

Realleges and expressly, by reference, makes parts of this cause of action the allegations contained in Paragraphs I, II and III of the sixth cause of action herein alleged, and alleges that pursuant to the terms of Exhibit "F" attached to the complaint herein said Dakota Public Service Company delivered to the defendant 49,270,000 kilowatt hours of electrical energy, and during said period paid to defendant large sums of money as alleged in Paragraph VIII of plaintiff's sixth cause of action.

II.

As of the 1st day of July, 1939, defendant, through its Board of Directors and officers then in office as in this complaint alleged, caused said Dakota Public Service Company to make a contract with defendant entitled "Agreement for Allocation of joint management expenses" of which a true and correct copy is hereto annexed and marked Exhibit "H" and expressly by reference made a part hereof. Said contract was never filed with the Federal Power Commission as a rate agreement or as an agreement affecting any rate or charge for electrical energy or the transmission thereof, although said agreement and the exaction by defendant of payments thereunder from said Dakota Public Service Company did affect the rates and

charges collected by the defendant from said Dakota Public Service Company under the original of Exhibit "F" to this complaint. Defendant, pursuant to the terms of the original of said Exhibit "H", charged said Dakota Public Service Company and caused it to pay to defendant for the period from July 1, 1941 to October 19, 1945, the sum of Ten Thousand, Two Hundred and Thirty-seven and 74/100 Dollars ($10,237.74) for dispatchers' salaries and expenses and during said period said dispatchers' services for which said charge was made consisted, among other things, of controlling the flow of energy exchanged under the terms of the original of Exhibit "F" to this complaint.

Amended Prayer.

Wherefore, plaintiff demands judgment against the defendant

(1) Declaring each of the contracts pleaded in plaintiff's complaint be void;

(2) Declaring that the aforesaid charges for interconnection facilities and transmission line charges and for dispatchers' salaries and expenses to be unjust, and unreasonable and unlawful in their entirety;

(3) Determining the fair and just and reasonable amounts owing to plaintiff on account of the aforesaid electrical energy purchased by defendant;

(4) Requiring defendant to account to the plaintiff for all funds received by defendant from Northern Power and Light Company, North Dakota Power & Light Co. and Dakota Public Service Company, as set forth in plaintiff's complaint and amendments thereto, or as may be shown by such accounting.

(5) For the sum of Four Hundred Ninety Seven Thousand, Four Hundred Forty Seven and 24/100th Dollars ($497,447.24) with interest at the rate of six per cent per annum from the date of each payment of each portion thereof, by North Dakota Power & Light Co., Northern Power and Light Company and Dakota Public Service Company, to the defendant.

(6) For such other and further relief as is just and equitable.

(7) For plaintiff's costs and disbursements herein.

Exhibit "G"

Agreement for Allocation of
Joint Management Expenses.

This agreement made in the City of Huron, State of South Dakota, on January 2nd, 1936, by Northwestern Public Service Company, a corporation, duly created, organized and existing under and by virtue of the laws of the State of Delaware, (herein called the "First Party") and North Dakota Power & Light Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Delaware, (herein called the "Second Party") and Northern Power & Light Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Delaware, (herein called the "Third Party") and Knife River Coal Mining Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Minnesota, (herein called the "Fourth Party"),

Witnesseth:

Whereas, the First, Second and Third Parties hereto own and operate electric, gas and steam utilities and the Fourth Party owns and operates a lignite coal mine in Mercer County, North Dakota; and

Whereas, the parties hereto jointly maintain a central office in the City of Huron, South Dakota, with an executive staff and a central organization to carry on the business of the respective companies including the following functions:

1. Executive: Members of the executive staff serve as President and Vice-President of each of the companies, and formulate the plans and policies of each company.

2. Secretary and Treasury: Members of this department serve as Secretary and Treasurer of each of the companies.

This department keeps all corporate records, prepares and files reports for all State and Federal governmental bodies; supervises the credit and collection activities of all companies; maintains relations with and furnishes necessary information to, investment bankers, insurance companies and financial and statistical agencies; prepares reports for, and maintains contact with, all state and local taxing units; assists in the preparation of annual reports for all companies; handles banking and finances; handles all insurance matters; arranges for meetings of stockholders and directors.

3. General Accounting and Auditing Department: A member of this department serves as Auditor for all companies. This department formulates and puts into effect the accounting policies and procedures, keeps all general records, prepares operating and financial reports, audits all invoices, assists in the accounting and preparation and distribution of construction, retirement and maintenance work orders, analyzes financial statements, makes researches and studies of other public utility accounting forms and practices, provides one or more traveling auditors for auditing the local accounting records of each company, prepares and files Federal income tax reports.

4. Engineering Department: This department consisting of a Transmission and Distribution engineer and a Combustion engineer, with the necessary assistants, analyzes and supervises expenditures for construction, investment, maintenance and retirements of each company, supervises all engineering practices and formulates operating and construction policies designed to improve operating efficiency.

5. Purchasing Department: Negotiates for all the companies both joint and individual purchasing agreements, controls the investment in material and supplies and disposes of idle or surplus equipment.

6. Commercial Department: Formulates and develops sales programs of each company.

7. Rate Department: Formulates, revises and co-ordinates rate policies and schedules: handles rate proceedings before regulatory bodies; analyzes the service needs of various classes of customers and the conditions and costs

with respect thereto; assists in negotiations of power contracts.

8. Central Billing Department: Prepares and checks all customers' bills.

9. Load Dispatchers: The generating stations are interconnected with a transmission system and the load dispatchers direct the operation of generating units in order that the utmost efficiency for the system can be obtained. This plan also keeps to a minimum interruptions to service by reason of the failure of generating units or transmission lines.

In consideration of the advantages and economies accruing to each of the parties hereto from the arrangement for joint management organization, Now, Therefore, be it Mutually Agreed as follows:

1. The parties hereto agree that the joint management expenses in the central office including expenses of the several departments as above outlined shall be allocated to each of the parties hereto as follows:

During each calendar year:

(a) The salaries and expenses of the Engineering Department, Commercial Department, Central Billing Department and Load Dispatchers, will be allocated monthly to the first three parties hereto in the same ration that the gross operating revenues of each of the first three parties for the preceding calendar month bears to the combined gross operating revenues of said three parties for said preceding calendar month. In the event any service is performed by these departments for the fourth party a charge will be made on a time sheet basis for the actual cost to the central office.

(b) All other joint expenses, including salaries, rent, telephone and telegraph, traveling expenses, stationery, printing, and office supplies, etc., will be allocated monthly to the four parties hereto in the same ratio that the gross operating revenues of each of the said four parties for the preceding calendar month bears to the combined gross operating revenues of said four parties for said preceding calendar month.

(c) In the determination of expense allocation ratios, gross operating revenues shall not include inter-company sales between any of the parties hereto.

This agreement shall remain in effect until ninety days after any of the parties hereto shall have mailed to each of the other parties hereto written notice of desire to terminate.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By C. J. STRIKE,

Attest: Vice-President.

C. L. SANDSTEDT,
Secretary.

NORTH DAKOTA POWER & LIGHT COMPANY,

By F. E. KRUESI,

Attest: President.

C. L. SANDSTEDT,
Secretary.

NORTHERN POWER & LIGHT COMPANY,

By F. E. KRUESI,

Attest: President.

C. L. SANDSTEDT,
Secretary.

KNIFE RIVER COAL MINING COMPANY,

By F. E. KRUESI,

Attest: President.

C. L. SANDSTEDT,
Secretary.

Exhibit "H"

Agreement for Allocation of Joint Management Expenses.

This agreement made in the City of Huron, State of South Dakota, on July 1, 1939, by Northwestern Public Service Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Delaware, (herein called the "First Party") and Dakota Public Service Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Delaware, (herein called the "Second Party") and Knife River Coal Mining Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Minnesota, (herein called the "Third Party").

Witnesseth:

Whereas, the First and Second parties hereto own and operate electric, gas and heating utilities and the Third Party owns and operates a lignite coal mine in Mercer County, North Dakota; and

Whereas, the parties hereto maintain a central office in the City of Huron, South Dakota, with an executive staff and a central organization to carry on certain functions in connection with the business of each of the parties hereto including the following:

1. Executive: Members of the executive staff serve as President and Vice-President of each of the companies, and formulate the plans and policies of each company.

2. Secretary and Treasury: Members of this department serve as Secretary and Treasurer of each of the companies. This department on behalf of each party hereto keeps all corporate records, prepares and files reports for all State and Federal governmental bodies; supervises the credit

and collection activities; maintains relations with, and furnishes necessary information to, investment bankers, insurance companies and financial statistical agencies; prepares reports for, and maintains contact with, all state and local taxing units; assists in the preparation of annual reports for all companies; handles banking and finances; handles all insurance matters; arranges for meetings of stockholders and directors; and in general performs the duties ordinarily performed by the Secretary and the Treasurer of such companies.

3. General Accounting and Auditing Department. A member of this department serves as Auditor for all companies. This department on behalf of each party hereto formulates and puts into effect all accounting policies and procedure; keeps all general records; prepares operating and financial reports; audits all invoices; assists in the accounting preparation and distribution of construction, retirement and maintenance work orders; analyzes financial statements; makes researches and studies of public utility accounting forms and practices; provides one or more traveling auditors for auditing the local accounting records of each company; and prepares and files Federal income tax reports.

4. Engineering Department: This department consisting of a Transmission and Distribution Engineer and a Combustion Engineer, with the necessary assistants, analyzes and supervises expenditures for construction, investment, maintenance and retirements of each company, supervises all engineering practices and formulates operating and construction policies designed to improve operating efficiency.

5. Purchasing Department: On behalf of each party hereto negotiates all purchasing agreements, controls the investment in material and supplies and disposes of idle or surplus equipment.

6. Commercial Department: On behalf of each party hereto formulates and develops sales programs.

7. Rate Department: On behalf of each company formulates, revises and co-ordinates rate policies and schedules; handles rate proceedings before regulatory bodies; analyzes the service needs of various classes of customers and the conditions and costs with respect thereto; assists in negotiations of power contracts.

8. Central Billing Department: Prepares and checks all customers' bills rendered by each of the companies parties hereto.

9. Load Dispatchers: The generating stations of the companies parties hereto are interconnected with a transmission system and the load dispatchers direct the operation of generating units with a view to obtaining the greatest efficiency for the system and reducing to a minimum interruptions to service by reason of the failure of generating units or transmission lines.

Now, therefore, in consideration of the premises and of the economies accruing to each of the parties by the maintenance of a central office and organization, the parties hereto mutually agree as follows:

(1) The expenses of the central office, including the expenses and salaries of the several departments as hereinabove outlined, shall be allocated to and paid by each of the parties hereto as follows:

During each calendar year:

(a) The salaries and expenses of the Engineering Department, Commercial Department, Central Billing Department and Load Dispatchers, will be allocated monthly to the first two parties hereto in the same ratio that the gross operating revenues of each of the first two parties for the preceding calendar month bears to the combined gross operating revenues of said two parties for said preceding calendar month. The Third Party shall pay actual costs on a time sheet basis to the extent it utilizes these departments of the central office as its share of the expense under this paragraph.

(b) All other joint expenses, including salaries, rent, telephone and telegraph, traveling expenses, stationery, printing, and office supplies, etc., will be allocated monthly to the three parties hereto in the same ratio that the gross operating revenues of each of the said three parties for the preceding calendar month bears to the combined gross operating revenues of said three parties for said preceding calendar month.

(c) In the determination of expense allocation ratios, gross operating revenues shall not include intercompany sales between any of the parties hereto.

(2) Each member of the central organization, in acting on behalf of, or in connection with the business of, any of the parties hereto shall be deemed to be exclusively the employee of such party; and none of the parties hereto shall be liable by virtue of this agreement to either of the other parties on account of any action or non-action of any member of the central organization in connection with the business or affairs of such other party.

(3) It is understood and agreed that this agreement cancels and supersedes the agreement for allocation of expenses dated July 2, 1936 between Northwestern Public Service Company, North Dakota Power & Light Company, Northern Power and Light Company, and Knife River Coal Mining Company, Northern Power and Light Company and North Dakota Power & Light Company having been merged, effective as of this date, under the corporate name of "Dakota Public Service Company."

Nothing in this agreement shall affect any rights or liabilities accrued under the previous agreement prior to July 1, 1939.

(4) This agreement shall remain in effect until ninety days after any of the parties hereto shall have mailed to each of the other parties hereto written notice of desire to terminate.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By A. B. SANBORN,
President.

Attest:

J. F. BUCKMIER,
Secretary,

(Seal)

DAKOTA PUBLIC SERVICE COMPANY,

By C. L. SANDSTEDT,
Vice President.

Attest:

J. F. BUCKMIER,
Secretary.

(Seal)

KNIFE RIVER COAL MINING COMPANY,

By C. L. SANDSTEDT,

Attest:

J. F. BUCKMIER,
Secretary.

(Seal)

(Indorsed)—Filed Feb. 10, 1948, Roy B. Marker, Clerk

Supplemental Answer No. 3.

(Answer to Seventh, Eighth, Ninth and Tenth Causes of Action in the Complaint, as Amended).

United States District Court
District of South Dakota
Western Division.

Montana-Dakota Utilities Co., a corporation,
Plaintiff,
vs.
Northwestern Public Service Company, a corporation,
Defendant.

Civil Action
File No. 241 W. D.

Seventh Cause of Action.

I.

Answering Paragraph I of plaintiff's Seventh Cause of Action, defendant realleges and expressly by reference makes a part of its answer to said Paragraph I of plaintiff's Seventh Cause of Action the allegations contained in Paragraphs I, II, III, IV, V, VI, VII and VIII set forth in its answer to plaintiff's First Cause of Action.

II.

Answering Paragraph II of plaintiff's Seventh Cause of Action, defendant admits that it entered into a contract dated January 2, 1936, with the Northern Company, to which the North Dakota Company and Knife River Coal Mining Company were also parties, and that Exhibit "G" annexed to and made a part of the complaint as amended, is a true and correct copy of said contract; denies that defendant, through its Board of Directors and officers then in office as alleged in the complaint or otherwise, caused the Northern Company to make said contract; admits that said contract was never filed with the Federal Power Commis-

sion; denies that said agreement or the payments made thereunder by the Northern Company affected the rates and charges collected by defendant from the Northern Company under Exhibit "B" to the complaint, as alleged in said Paragraph II or otherwise; denies that defendant exacted any payments under said contract from the Northern Company; admits that defendant charged the Northern Company and that the Northern Company reimbursed defendant for the period stated in said Paragraph II the sum of money therein stated for dispatchers' salaries and expenses; denies that defendant caused the Northern Company to pay said sum of money or any part thereof; admits that during the period stated in said Paragraph II the dispatchers' services for which the charges were made consisted, among other things, of controlling the flow of energy inter-changed under the terms of the original of Exhibit "B" to the complaint; except as hereinabove in this answer to said Paragraph II expressly admitted or otherwise stated, defendant denies each and all of the allegations contained in said Paragraph II.

III.

Further answering said Paragraph II, defendant alleges that the arrangement by which joint management expenses, including salaries and expenses of the load dispatchers, were apportioned between the four companies who were parties to such joint management arrangement on a gross operating revenue basis was initiated during the period of the receivership of United Public Utilities Company and such basis of apportionment went into effect for the first time on November 1, 1932; that Samuel W. White, the receiver of said United Public Utilities Company, approved of and consented to said apportionment arrangement and reported the same to the United States District Court of which he was an officer as such receiver and obtained therefor the approval of said court; that during the period from January 1, 1935, to and including October 19, 1945, during all of which said Samuel W. White was the President and a director of United Public Utilities Corporation, the successor to all of the properties and assets of said United Public Utilities Company, and which during such

period was the sole stockholder of the Northern Company and of the Dakota Company, its successor, said apportionment arrangement on the basis of gross operating revenues was continued by and with the consent and approval of said Samuel W. White and United Public Utilities Corporation.

IV.

For further answer to plaintiff's Seventh Cause of Action defendant realleges Paragraphs XV and XVI of defendant's answer to plaintiff's first Cause of Action and hereby incorporates the same herein and makes them a part of defendant's answer to plaintiff's Seventh Cause of Action; except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "G" and the allegations shall be deemed to apply to the appropriate corporations referred to in this Seventh Cause of Action.

V.

Defendant expressly adopts, reaffirms and realleges, as fully as though set forth herein at length, as defenses to said Seventh Cause of Action the First Defense, the Second Defense, the Third Defense and the Fifth Defense contained in the answer of defendant heretofore served and filed in this action.

Eighth Cause of Action.

I.

Answering Paragraph I of plaintiff's Eighth Cause of Action, defendant realleges and expressly by reference makes a part of its answer to said Paragraph I of plaintiff's Eighth Cause of Action the allegations contained in Paragraphs I, II, III, IV, V, VI, VII and VIII set forth in its answer to plaintiff's First Cause of Action; denies each and all of the allegations in said Paragraph I other than those as to reallegation and reference (answered in the preceding part of this sentence); alleges that during the period from September 1, 1935, to July 1, 1939, defendant purchased from plaintiff's predecessors 23,049,842

kilowatt hours of electric energy, which was mostly "surplus" or "dump" energy, and during said period plaintiff's predecessors purchased from defendant 10,499,461 kilowatt hours of electric energy, which was mostly "peak" energy; and admits that the net exchange of electric energy during said period was 12,550,381 kilowatt hours from plaintiff's predecessors to defendant.

II.

Answering Paragraph II of plaintiff's Eighth Cause of Action, defendant admits that it entered into a contract dated January 2, 1936, with the North Dakota Company, to which the Northern Company and Knife River Coal Mining Company were also parties, and that Exhibit "G" annexed to and made a part of the complaint as amended, is a true and correct copy of said contract; denies that defendant, through its Board of Directors and officers then in office as alleged in the complaint or otherwise, caused the North Dakota Company to make said contract; admits that said contract was never filed with the Federal Power Commission; denies that said agreement or the payments made thereunder by the North Dakota Company affected the rates and charges at which the North Dakota Company sold electrical energy to the Northern Company, as alleged in said Paragraph II or otherwise; denies that defendant exacted any payments under said contract from the North Dakota Company; denies that defendant caused the North Dakota Company to sell electrical energy to the Northern Company as in the Eighth Cause of Action alleged or otherwise; admits that defendant charged the North Dakota Company and that the North Dakota Company reimbursed defendant for the period stated in said Paragraph II the sum of money therein stated for dispatchers' salaries and expenses; denies that defendant caused the North Dakota Company to pay said sum of money or any part thereof; admits that during the period above stated the dispatchers' services for which the charges were made consisted, among other things, of controlling the flow of energy from the North Dakota Company and alleged to be sold by that company to the Northern Company and by the latter to defendant; except as hereinabove in this answer to

said Paragraph II expressly admitted or otherwise stated, defendant denies each and all of the allegations contained in said Paragraph II.

III.

Further answering said Paragraph II, defendant alleges that the arrangement by which joint management expenses, including salaries and expenses of the load dispatchers, were apportioned between the four companies who were parties to such joint management arrangement on a gross operating revenue basis was initiated during the period of the receivership of United Public Utilities Company and such basis of apportionment went into effect for the first time on November 1, 1932; that Samuel W. White, the receiver of said United Public Utilities Company, approved of and consented to said apportionment arrangement and reported the same to the United States District Court of which he was an officer as such receiver and obtained therefor the approval of said court; that during the period from January 1, 1935, to and including October 19, 1945, during all of which said Samuel W. White was the President and a director of United Public Utilities Corporation, the successor to all of the properties and assets of said United Public Utilities Company, and which during such period was the sole stockholder of the North Dakota Company, said apportionment arrangement on the basis of gross operating revenues was continued by and with the consent and approval of said Samuel W. White and United Public Utilities Corporation.

IV.

For further answer to plaintiff's Eighth Cause of Action, defendant realleges Paragraphs XV and XVI of defendant's answer to plaintiff's First Cause of Action and hereby incorporates the same herein and makes them a part of defendant's answer to plaintiff's Eighth Cause of Action; except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "G" and the allegations shall be deemed to apply to the appropriate corporations referred to in this Eighth Cause of Action.

V.

Defendant expressly adopts, reaffirms and realleges, as fully as though set forth herein at length, as defenses to said Eighth Cause of Action the First Defense, the Second Defense, the Third Defense, and the Fifth Defense contained in the answer of defendant heretofore served and filed in this action.

Ninth Cause of Action.

I.

Answering Paragraph I of plaintiff's Ninth Cause of Action, defendant realleges and expressly by reference makes a part of its answer to said Paragraph I of plaintiff's Ninth Cause of Action the allegations contained in Paragraphs I, II, III, and IV set forth in its answer to plaintiff's Fourth Cause of Action; denies each and all of the allegations in said Paragraph I other than those as to reallegation and reference (answered in the preceding part of this sentence) except that defendant admits that the Dakota Company paid to defendant $40,000.00 for transmission line charges provided for by the contract dated July 1, 1939, and delivered to defendant the number of kilowatt hours of electric energy stated in Paragraph VI of plaintiff's Fourth Cause of Action, which defendant alleges was mostly "surplus" or "dump" energy.

II.

Answering Paragraph II of plaintiff's Ninth Cause of Action, defendant admits that it entered into a contract dated July 1, 1939, with the Dakota Company, to which Knife River Coal Mining Company was also a party, and that Exhibit "H" annexed to and made a part of the complaint, as amended, is a true and correct copy of said contract; denies that defendant, through its Board of Directors and officers then in office as alleged in the complaint or otherwise, caused the Dakota Company to make said contract; admits that said contract was never filed with the Federal Power Commission; denies that said agreement or the payments made thereunder by the Dakota

Company affected the rates and charges collected by defendant from the Dakota Company under Exhibit "D" to the complaint, as alleged in said Paragraph II or otherwise; denies that defendant exacted any payments under said contract from the Dakota Company; admits that defendant charged the Dakota Company and that the Dakota Company reimbursed defendant for the period stated in said Paragraph II the sum of money therein stated for dispatchers' salaries and expenses; denies that defendant caused the Dakota Company to pay said sum of money or any part thereof; admits that during the period stated in said Paragraph II the dispatchers' services for which the charges were made consisted, among other things, of controlling the flow of energy inter-changed under the terms of Exhibit "D" to the complaint; except as hereinabove in this answer to said Paragraph II expressly admitted or otherwise stated, defendant denies each and all of the allegations contained in said Paragraph II.

III.

Further answering said Paragraph II, defendant alleges that the arrangement by which joint management expenses, including salaries and expenses of the load dispatchers, were apportioned between the four companies who were parties to such joint management arrangement on a gross operating revenue basis was initiated during the period of the receivership of United [Publis] Utilities Company and such [bais] of apportionment went into effect for the first time on November 1, 1932; that Samuel W. White, the receiver of said United Public Utilities Company, approved of and consented to said apportionment arrangement and reported the same to the United States District Court of which he was an officer as such receiver and obtained therefor the approval of said court; that during the period from January 1, 1935, to and including October 19, 1945, during all of which said Samuel W. White was the President and a director of United Public Utilities Corporation, the successor to all of the properties and assets of said United Public Utilities Company, and which during such period was the sole stockholder of the Dakota Company and of its two predecessors, said apportionment arrangement on the basis of gross

operating revenues was continued by and with the consent and approval of said Samuel W. White and United Public Utilities Corporation.

IV.

For further answer to plaintiff's Ninth Cause of Action, defendant realleges Paragraphs XV and XVI of defendant's answer to plaintiff's First Cause of Action and hereby incorporates the same herein and makes them a part of defendant's answer to plaintiff's Ninth Cause of Action; except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "H" and the allegations shall be deemed to apply to the appropriate corporations referred to in this Ninth Cause of Action.

V.

Defendant expressly adopts, reaffirms and realleges, as fully as though set forth herein at length, as defenses to said Ninth Cause of Action the First Defense, the Second Defense, the Third Defense and the Fifth Defense contained in the answer of defendant heretofore served and filed in this action.

Tenth Cause of Action.

I.

Answering Paragraph I of plaintiff's Tenth Cause of Action, defendant realleges and expressly by reference makes a part of its answer to said Paragraph I of plaintiff's Tenth Cause of Action the allegations contained in Paragraphs I, II and III set forth in its answer to plaintiff's Sixth Cause of Action; denies each and all of the allegations in said Paragraph I other than those as to reallegation and reference (answered in the preceding part of this sentence) except that defendant admits that the Dakota Company delivered to defendant 49,270,000 kilowatt hours of electric energy, which defendant alleges was mostly "surplus" or "dump" energy, and further admits that during the period stated in Paragraph VIII of plain-

tiff's Sixth Cause of Action, the Dakota Company paid to defendant the sums of money therein stated.

II.

Answering Paragraph II of plaintiff's Tenth Cause of Action, defendant admits that it entered into a contract dated July 1, 1939, with the Dakota Company, to which Knife River Coal Mining Company was also a party, and that Exhibit "H" annexed to and made a part of the complaint, as amended, is a true and correct copy of said contract; denies that defendant, through its Board of Directors and officers then in office as alleged in the complaint or otherwise, caused the Dakota Company to make said contract; admits that said contract was never filed with the Federal Power Commission; denies that said agreement or the payments made thereunder by the Dakota Company affected the rates and charges collected by defendant from the Dakota Company under Exhibit "F" to the complaint, as alleged in said Paragraph II or otherwise; denies that defendant exacted any payments under said contract from the Dakota Company; admits that defendant charged the Dakota Company and that the Dakota Company reimbursed defendant for the period stated in said Paragraph II the sum of money therein stated for dispatchers' salaries and expenses; denies that defendant caused the Dakota Company to pay said sum of money or any part thereof; admits that during the period stated in said Paragraph II the dispatchers' services for which the charges were made consisted, among other things, of controlling the flow of energy inter-changed under the terms of the original of Exhibit "F" to the complaint; except as hereinabove in this answer to said Paragraph II expressly admitted or otherwise stated, defendant denies each and all of the allegations contained in said Paragraph II.

III.

Further answering said Paragraph II, defendant alleges that the arrangement by which joint management expenses, including salaries and expenses of the load dispatchers, were apportioned between the four companies

who were parties to such joint management arrangement on a gross operating revenue basis was initiated during the period of the receivership of United Public Utilities Company and such basis of apportionment went into effect for the first time on November 1, 1932; that Samuel W. White, the receiver of said United Public Utilities Company approved of and consented to said apportionment arrangement and reported the same to the United States District Court of which he was an officer as such receiver and obtained therefor the approval of said court; that during the period from January 1, 1935, to and including October 19, 1945, during all of which said Samuel W. White was the President and a director of United Public Utilities Corporation, the successor to all of the properties and assets of said United Public Utilities Company, and which during such period was the sole stockholder of the Dakota Company and of its two predecessors, said apportionment arrangement on the basis of gross operating revenues was continued by and with the consent and approval of said Samuel W. White and United Public Utilities Corporation.

IV.

For further answer to plaintiff's Tenth Cause of Action, defendant realleges Paragraphs XV and XVI of defendant's answer to plaintiff's First Cause of Action and hereby incorporates the same herein and makes them a part of defendant's answer to plaintiff's Tenth Cause of Action; except that in each instance where Exhibit "B" is mentioned or referred to therein, it shall be deemed to be Exhibit "H" and the allegations shall be deemed to apply to the appropriate corporations referred to in this Tenth Cause of Action.

V.

Defendant expressly adopts, reaffirms and realleges, as fully as though set forth herein at length, as defenses to said Tenth Cause of Action the First Defense, the Second Defense, the Third Defense and the Fifth Defense contained in the answer of defendant heretofore served and filed in this action.

Wherefore, defendant prays judgment as prayed by it in its original answer filed herein.

Dated February 13, 1948.

MAX ROYHL,
Huron, South Dakota,
RALPH MAUCH,
Huron, South Dakota,
FREDRIC H. STAFFORD,
Chicago, Illinois,
JOHN B. ROBINSON, JR.,
Chicago, Illinois,
M. T. WOODS,
Sioux Falls, South Dakota,
Attorneys for Defendant.

Due Service of the within answer admitted Feb. 13th, 1948.

JOHN C. BENSON,
Attorney for Plaintiff.

(Indorsed)—Filed Feb. 13, 1948, Roy B. Marker, Clerk.

(Transcript of Testimony and Proceedings.)

(Filed in U. S. District Court on May 21, 1948.)

In the District Court of the United States,
For the District of South Dakota,
Southern Division.

Montana Dakota Utilities Co., a Corporation,
Plaintiff,
vs.
Northwestern Public Service Co., a Corporation,
Defendant.
No. 241–W. D.–Civil.

Before Hon. A. Lee Wyman, District Judge.

Messrs. John C. Benson, of Minneapolis, Minn., H. F. Fellows, of Rapid City, S. D., and Pat Morrison, of Mobridge, S. D., appeared as counsel for plaintiff.

Messrs. Fredric H. Stafford and John B. Robinson, Jr., of Chicago, Ill., Max Royhl, of Huron, S. D., and M. T. Woods, of Sioux Falls, S. D., appeared as counsel for the defendant.

Proceedings were had as follows:

Mr. Fellows: If Your Honor please, my opening statement is brief and it will show the Court the division of the issues that are going to be tried. I have boiled this down to a brief statement of the nature and origin of our demands without going into the details of the evidence. Much of the evidence will necessarily consist of the results or findings from skilled witnesses, or computations of skilled or expert witnesses, from examination of the records that were made by the common directors of the companies which formerly operated these utilities, and prior to our purchase of these properties.

The Northern Power & Light Co. and the North Dakota Power & Light Co. were North Dakota concerns, and they may be called the northern companies during the trial,

were on July 1, 1939, merged into Dakota Public Service Co., which was also a North Dakota company. These three companies were northern companies.

The Court: Just a minute. The first two companies you mentioned there were merged into the third company, so after that there was but the one?

Mr. Fellows: The one company, and the plaintiff became the successor of this last named company, to-wit: The Dakota Public Service Company, in October, 1945, and acquired all of the causes of action that we sue under here by due assignment from this last Dakota Public Service Co.

The contracts and the rates involved in this action will be shown to be without compliance with the requirement of the Federal Power Commission. All of the [corporation] had identical and dual officers or directors at the time of all of the acts charged here. The first cause of action is what might be called the inter-connection contract. We will prove that the defendant, The Northwestern Public Service Company, by fraudulent or otherwise unlawful contracts, contracts that were not only fraudulent by reason of active effort but by reason of concealment and constructive effort, but were unlawful by reason of non-compliance with the laws of the United States, they were unlawful contracts; that by such contracts for rental of transmission lines between January 1, 1936 and June 30, 1939, the contracts for rental which we had to pay for transmission lines, which transmission lines were built back in 1930 by the defendant and for its sole benefit, took from our assignors, Dakota Public Service Co., the sum of $1666.66 a month or a total of $70,000.00 on the first cause of action.

The second cause of action, we will show to you, the common and identical officers and directors of all of these companies, by fraudulent and otherwise unlawful contracts, not only actually fraudulent but unlawful in many respects, permitted the defendant, through common and dual officers and directors, permitted the defendant corporation, from September 1, 1935, to July 1, 1939, to purchase from our assignor, the North Dakota company, electric energy of the value of $94,127.00, for which the defendant was required to pay, by these same dual officers and direc-

tors, only the sum of $62,750.00, making an underpayment of $31,377.00. We are suing for that amount they owe us, the underpayment. This energy was purchased by the defendant, through the manipulations of these common and dual directors, for five mills per kilowatt hour, when the cost, the actual cost, was known to them, for generating it, was seven and one-half mills per kilowatt hour.

The third cause of action is of a different form. We will show you that for eight years prior to January 1, 1938, our assignor, the northern companies, and the defendant company, with these same dual officers and directors, had exchanged electric energy across the North Dakota-South Dakota state line, the bulk of which was generated in North Dakota, without any charge at all. In other words, they just exchange whatever they had to exchange for eight years. We will show you that, however, during 1938 and 1939, by such fraudulent and unlawful contracts, the defendant collected from the northern companies the sum of $32,508.00 for so-called firm demand or reserve capacity charge for anticipated use of transmission lines built by the defendant for its own benefit. That the charge was at the rate of $13.20 per kilowatt, under a contract signed, Your Honor, by these common officers and directors, in which there was no obligation to furnish any energy, but charged for just the same, and where it was known to them that there was no reserve capacity energy which could be furnished, the charge being for ability to furnish energy which did not exist and for which the northern companies—for which they had received and already paid the fixed transmission charge for all energy furnished and for which the Northern companies had already paid five mills per kilowatt hour charged for energy furnished to them over that line, and it will appear that this charge was for the purpose of offsetting charges of the northern companies for electrical energy they sold to the defendant. In other words, the plaintiff sold more to the defendant and didn't get paid for it, and by this ruse the defendant corporation attempted to recapture or recoup or offset the claim. The item in this cause of action is for $32,500.00. That is the third cause of action.

The fourth cause of action is that through the same fraudulent and unlawful contracts, from July 1, 1939, to July 1, 1941,—we cover different periods as we go along—

and in the same manner complained of in the first cause of action, but during a different period, the defendant took from the northern companies a so-called interconnection charge of $40,000.00, for the two years involved in the fourth cause of action for rental of transmission lines, and in addition the defendant purchased from the northern companies electrical energy in the manner complained of in the second cause of action—that is the underpayment—of the value of $89,018.00, for which they were required to pay only the sum of $59,345.00, making the underpayment or shortage in payment of $29,672.00 during these two years. That the energy so purchased by the defendant was purchased through these connivances of the general officers and directors for less than it cost to make. The total sought in this cause of action is $69,672.00.

In the fifth cause of action we will show you that by the same kind of contracts and same kind of dealings and in the same manner complained of in the third cause of action, but during a different period of time, the defendant collected from the northern companies and the so-called firm demand or reserve capacity charge in 1939, 1940 and 1941, in the sum of $23,092.00. That this charge was at the rate of $13.20 per kilowatt per year, for anticipated use of transmission lines when it was then known to all of those officers and directors there was no reserve energy capacity which could be furnished, and if operated to peak, this potential ability to furnish energy did not exist.

The sixth cause of action we will show you by means of this same kind of contracts and in the same manner complained of in the third, fourth and fifth causes of action, but for a different period, the defendant took from the northern companies during 1941 to 1945, inclusive,—the 1945 charge for the year was up to the time we acquired by assignment and purchase the rights of the claim of Dakota Public Service Co. For a different period the defendant took from the northern companies the sum of $56,264.00 for this same so-called firm demand charge at the rate of $13.20 per kilowatt for anticipated use of transmission lines where it was known that no reserve energy existed or could be furnished. And in addition, during the same period, they took from the northern companies the sum of $56,021.00 for transmission line rentals in the manner complained of in the first cause of action for a different

period at the rate of $1666.66 a month. That is for lines they had built years before for their own use and for which, we will show the Court, they had made a bad investment building those lines, and one of the purposes, of building, the evidence will show, was to go into the city of Pierre when they tried to get a franchise and fell down on the franchise and were left with a stub end of line. From there the correspondence and letters will show they then conceived the idea of getting their investment back by sticking the northern companies on what they called the interconnection charge. That they collected during this period $86,021.00 for transmission line rentals, as I said, in the manner complained of in the first cause of action but for a different period, at the same rate, $20,000.00 a year. We will show during the same period the defendant purchased energy from the northern companies in the same manner complained of in the second and fourth causes of action worth $328,491.00 and paid for it only $218,994.00, making a short or underpayment of $109,497.00. The recovery asked in this cause of action totals $251,783.00.

Now, Your Honor, for those reasons and upon the proof which will show the invalidity of the contracts, that all of the charges I have mentioned are unjust, unreasonable, unlawful and fraudulent in their entirety, the plaintiff to this action asks for a judgment declaring all of the contracts under which the charges were made to be void, and the charges be declared to be unjust, unreasonable, fraudulent and unlawful in their entirety, and the fair, just and reasonable amount due the plaintiff for electric energy furnished by it be determined and defendant be required to account to plaintiff for all of the funds actually and wrongfully received by it from the northern companies; for a total judgment against the defendant for, with a number of items, as we feel, still in these accounts, for the sum of $478,232.00, with legal interest from the date of each payment.

I think, Your Honor, without going into any evidence, that outlines simply the nature of the claims and how they originated and the amount.

Mr. Royhl: May it please the Court: I assume counsel spoke [georgraphically] when he spoke of the North Dakota Power & Light Co. and Northern Power & Light Co. as being North Dakota companies. They were Delaware companies. Geographically they operated, they operated largely in North Dakota, although not entirely.

Now, it seems to me we should briefly state the nature of our proof insofar as these corporations are concerned. The North Dakota Power & Light Co. and the Northern Power & Light Co. were separately owned sometime prior to 1929, and separately operated companies. Approximately 1929, those two companies, together with the Knife River Coal Mining Co., became the property of United Public Utilities Company, which was a holding company. These companies about that time, in 1929, under one control with the Northwestern Public Service Co., were placed in the operating charge of the then officers of the Northwestern Public Service Co., which operates not in North Dakota but in South Dakota. At the time they were taken over in 1929 in that manner and operated for approximately a year or so before bankruptcy, it was found that transmission lines in North Dakota were in bad shape; they had insufficient generating capacity, and were having much trouble up there in a municipal way. Assuming that because of the fact that they were then under one control and ownership, which was the Middle West Utilities Company, that they would be merged and operated as one company following 1929 and because of the urgent need of additional generating capacity, certain connections were made by and between Northwestern Public Service Co. and these companies, coming to their aid in supplying over peak periods and in emergencies such additional generating capacity as they needed.

Now, these interconnections, which the Court will find very early in the testimony, consisted of a transmission line running up from Blunt, which was then a Northern Power & Light Co. station, and owned by the Northern Power & Light Co. It ran up to Gettysburg, which was then and is now the property of the Northern Power & Light Co. and its successors. That is, Northwestern Public Service Co. had nothing in Blunt and they had no interest in Gettysburg. The sole purpose of making this interconnection was to feed this Northern Power & Light Co. which

extended from Lemmon, South Dakota, to Ellendale, North Dakota, with only three small generating units, one in Mobridge and one in Lemmon and one in Ellendale, and also a small unit in Gettysburg. All small and wholly inadequate to supply the needed generation. In addition to that, facility to stabilize the business of the circuits of the Northern Power & Light Co., a transmission line was extended north from Aberdeen to Barnard, a distance of some twenty miles. I think the Gettysburg transmission line was some sixty-six miles. From Aberdeen to Barnard they put in a transmission line which fed the juice into the eastern part of the Northern Power & Light Co. line and could be reached over into the North Dakota system from that point. Also they built a transmission line and substation between Aberdeen and Ipswich. The cost, etc., will be shown in the evidence. The sole purpose of the transmission line at Aberdeen was, of course, for the purpose of stabilizing the circuit there of the Northern Power & Light Co. and feeding juice in at that point as emergency or demand required it to be supplied. A portion of the substation at Aberdeen was charged to the cost of the interconnection facility. Not all of it. Approximately $300,000.00 was invested by the Northwestern Public Service Co. in the creating and building of these facilities. Mind you, that was done in 1930, and then this holding company who owned the North Dakota Company, the Northern Company and the Knife River Coal Mining Co. went into receivership to begin with and later into bankruptcy. A man by the name of White was appointed receiver and trustee from 1932 to 1935, at which time, in 1935, under the Bankruptcy Act, there was a reorganization in which a new corporation was formed, the United Public Utilities Corporation, taking over these three companies, not the Northwestern Public Service Co., and changing the general interest that the owner of the Northwestern Public Service Co. might have had in the bankrupt holding company. About the same time the holding company that owned indirectly the Northwestern Public Service Co. went into bankruptcy. That was in 1932, and receivers and trustees were appointed there. So the idea, as the evidence will show, and Mr. Strike tells that very graphically, that they were apprised definitely, that these three [corporation], the North-

west Public Service Co., and the two utilities in South Dakota and North Dakota, would be ever merged, that that was dissipated because, by these bankruptcy proceedings, ownership had been changed in such a manner that it was not to be contemplated. So Mr. Strike, interlocking director, said to these companies, now Northwestern Public Service Co. has $300,000.00 here invested of its own funds in facilities which are a protection and stabilization of your system, and there must be some arrangement made whereby contracts be made to help carry that load. Some time about the same time a five mill deal had been made with the receiver and trustee, later the president of the North Dakota Company only, whereby five mills was to be fixed and stabilized of the value of energy to be exchanged between the inter-company connection. That is, if Northwestern Public Service Co. sold a kilowatt hour to North Dakota, North Dakota and Northern later merged as Dakota Public Service Co., they were to receive five mills for it. And the reverse was true if those companies sold to Northwestern Public Service Co. Insofar as the five mills charge, the evidence will show that the energy that came from North Dakota into South Dakota to the Northwestern Public Service Co. [ia] a pure energy charge, and was almost wholly dump or surplus energy. That [it], it was furnished to Northwestern Public Service Co. to be sold here as the demand of the companies in North Dakota did not call for it, and was surplus, to them, power. The evidence will show that the incremental fuel cost and miscellaneous cost of this energy to those companies in North Dakota, because of mine mouth generating station at Beulah, North Dakota, was in the neighborhood of some 2.65 mills. Under that arrangement, at its inception, the North Dakota Company, owner of the company, owner of the mine mouth generator station, which was the base station and the cheapest generator on all three of these systems, that energy was sold to Northern Company, at 3.5 mills by the North Dakota Company, and then such as was passed to Northwestern Public Service Co., if it was not used by Northern, was sold to Northwestern Public Service Co. at five mills. The evidence will show that this made a profit to the North Dakota Corporation in both transactions and that it was beneficial to a certain extent to Northwestern Public Service Co., because their lowest

cost generating station, as the evidence will show, was over 5 mills, less than 6 mills. I am speaking now of the incremental fuel cost. They got generally this surplus power, at least, at a cost of less than 6 mills. And those profits will be shown by proper study, showing the arrangement to be beneficial to all three of these companies. Also it will be shown that on any cost basis in excess of 5 mills the Northwestern Public Service Co. would not have purchased this power because they could generate it for only slightly more than that amount. The evidence will also show that during all of these times the Northwestern Public Service Co. had ample and excess generating capacity. That is, they were not dependent at peak or emergency times on these North Dakota companies in any sense. It was a "force bid" insofar as they were concerned.

Eventually these receiverships were cleaned up and organizing operating corporations were again under way, and Sam White, president of the company that owned the North Dakota utilities companies, which were later merged into Dakota Public Service Co., and with the Northwestern Public Service Co. operating under the same management.

The first contract that was made was made, and I am speaking now of the written contract and which is Exhibit B in the complaint, that was made in the year of 1936 and was retroactive to January 1 of that year, and it covered, pursuant to negotiations, both an energy charge at 5 mills, which continued during the entire relationship of these companies from 1933 to 1945 when this plaintiff purchased it. That 5 mill charge never changed. This 1936 contract included again one other feature and that was the interconnection facility rental charge of $20,000.00 a year. In other words at a cost, of about $300,000.00 it was figured the rental of $20,000.00 to the North Dakota companies was a fair and reasonable charge in view of the fact of their absolute necessity in their use and protection, and the cost of maintenance, the original cost of construction, etc. Now, these contracts were signed by the interlocking board out here in the field. The same claim of overreaching in this law suit is contained in the allegation in each cause of action, of fraud on the part of the individuals who were at that time here in the field as interlocking board members and as interlocking officers. Speak-

ing of each contract they say, after stating the rates and charges made, they say it was fixed by the aforesaid common officers and directors, purporting to act for both of said corporate parties thereto, and was without consideration, unjust, unreasonable and unlawful in its entirety. That is the basis upon which they predicate the fraud. The fraud of individuals who were out here in the field as directors. The evidence will show that none of these individuals had any interest except a job. They were not investment bankers. They were not holding corporations. They were men out here in the field who were trying to furnish service to the localities that were served by these various companies. And the evidence will show that in every instance where a contract was made it was not a contract made, dictated or controlled by these men out here in the field but it was dictated and controlled and was not signed or completed except on instructions from the stockholders and owners of these several utilities companies. There was a joint management agreement on which I think there will be some comments hereafter, but it is not now in the pleadings and I will not touch upon that at the present time.

We have now mentioned one contract that covered the energy rate and the rental charge for the interconnection facilities. In 1938 and after considerable study the corporations entered into what they called a reserve capacity arrangement whereby each company paid to the other in accordance with the relationship of their generating capacity, firm, reliable generating capacity, in its relationship to the load that it carried on their systems and in relationship to what was known as common peak load between the three companies, coincidental peak load. This contract as well was made, as the evidence will show, by the owners of these corporations and not by the men out here in the field as is alleged in this case. The stockholders of the predecessor companies to the plaintiff, through their officers and agents, dictated and controlled these contracts, and none was made without their direction. Now, the evidence will show that at least in one or more years this reserve capacity was paid by Northwestern Public Service Co. to the North Dakota corporation, and no allegations of willingness to pay these back

has appeared in the pleadings or in the statement of counsel, assuming that what they say is correct.

We will show also, and I think under the memo decision of the Court on the jurisdictional question it is important to prove, we will also show that all of these rates and charges and the contracts that created them were filed with the Federal Power Commission, which was created, as the Court recalls, in 1935, and set up in working order sometime in 1936. They were all by that body marked as rate schedules and pursuant to those rate schedules and for a period of some nine years or more, the rates were paid in accordance with those rate schedules. We will show that in each instance those rates and rate schedules were fixed and determined by proceedings which fully complied with the rules and regulations of the Federal Power Commission, and we assume, of course, upon that proof, if we read the memo correctly, that will dispose of the jurisdiction of the Court.

I repeat that there was no fraud committed by these officers. That each rate, each charge, each contract was dictated by their predecessor companies and owners of those predecessor companies, and not by these men out in the field who were operating and trying to furnish service to the locality that they covered.

One other factor that will be submitted to the Court as an added feature of proof of the fact is that the predecessor company of the plaintiff owned this Knife River Coal Mining Co. By this arrangement they created a market not only for the surplus energy that was created by the mine mouth generating station, but they also created a market for their coal and as part of that situation the Northwestern Public Service Co. purchased its coal thereafter on a competitive market basis, and it stepped up and increased the load factor both in the mine and in the generating station, both of which were profitable to the common owner of those two North Dakota northern companies.

These companies, as counsel has said, were merged in July, 1939, and as merged the name was amended to Dakota Public Service Co., that company being the successor to North Dakota Power & Light Co. and Northern Power & Light Co.

I think the evidence will also show, Your Honor, that at all time Mr. White and his board of directors were kept advised and informed not only by monthly operating reports and monthly financial reports of each of these companies, but also by personal contact of the several men and the officers of this interlocking arrangement. That at least once or twice a year Mr. White and other members of his board of directors, came out here and went over the field and actually investigated the [the] operations of the company generally and also in connection with the contracts that were outstanding.

The proof will also show that the plaintiff made a full and complete investigation of all of these contracts and the relationship of these companies before purchasing and was fully advised and informed concerning them. The testimony will show that Mr. White and his board of directors maintained an independent legal department. That is, it was independent from the legal department of the Northwestern Public Service Co. and its owner, and that also Mr. White, and prior to entering into the 1936 contract and the 1938 contract, was advised by independent engineers who had no connection with Northwestern Public Service Co. or its parent whatsoever, and that based upon those independent investigations the contracts were made. That the engineers, in particular a man by the name of Lakin, visited these properties as direct agent for the owner before entering into the 1936 contract and that Mr. Lakin shortly following that became a member of the board of directors of the owner of the North Dakota Company and thereafter not only had personal knowledge that came from his own investigation, but he kept and maintained close touch with the original contract and workings of those contracts, and also with the development of the several companies.

We also contend that there has been no fraud or overreaching in the contracts and rates and charges that were made.

Plaintiff's evidence was as follows:

Plaintiff is, and was at all times material to this litigation, a duly organized Delaware corporation, duly qualified in the States of North Dakota and South Dakota.

On the 1st day of July, 1939, Northern Power and Light Company and North Dakota Power & Light Company, pursuant to the laws of the State of Delaware, merged into one corporation, North Dakota Power & Light Company, being the surviving corporation pursuant to the terms of said merger and changing its name in said merger proceedings to Dakota Public Service Company. Pursuant to the terms of said merger, Dakota Public Service Company became the owner of all of the properties and business of Northern Power and Light Company in addition to the properties on the date of the merger owned by North Dakota Power & Light Company and thereafter Dakota Public Service Company owned and operated as a public utility the properties formerly owned by it and the properties on the date of said merger owned by Northern Power and Light Company.

Plaintiff offered in evidence:

Plaintiff's Exhibit 4, consisting of a certified copy of Sections 59 and 60 of the Delaware Corporation Law, which read as follows:

Plaintiff's Exhibit 4.

Delaware Corporation Law Annotated 1937.

"Section 59. Consolidation or Merger; Proceedings for:—Any two or more corporations organized under the provisions of this Chapter, or existing under the laws of this State, for the purpose of carrying on any kind of business, may consolidate or merge into a single corporation which may be any one of said constituent corporations or a new corporation to be formed by means of such consolidation or merger as shall be specified in the agreement hereinafter required; the directors, or a majority of them, of such corporations as desire to consolidate or merge, may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms

and conditions of consolidation or merger, the mode of carrying the same into effect, and stating such other facts required or permitted by the provisions of this Chapter to be set out in Certificates of Incorporation, as can be stated in the case of a consolidation or merger, stated in such altered form as the circumstances of the case require, as well as the manner of converting the shares of each of the constituent corporations into shares of the consolidated corporation, with such other details and provisions as are deemed necessary.

"Said agreement shall be submitted to the stockholders of each constituent corporation, at a meeting thereof, called separately for the purpose of taking the same into consideration; of the time, place and object of which meeting due notice shall be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each such corporation either has its principal office or conducts its business, and a copy of such notice shall be mailed to the last known postoffice address of each stockholder of each such corporation, at least twenty days prior to the date of such meeting, and at said meeting said agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and if the votes of stockholders of each such corporation representing two-thirds of the total number of shares of its capital stock shall be for the adoption of the said agreement, then that fact shall be certified on said agreement by the Secretary of each such corporation, under the seal thereof; and the agreement so adopted and certified shall be signed by the President and Secretary of each of such corporations under the corporate seals thereof and acknowledged by the President of each such corporation before any officer authorized by the laws of this State to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations, and the agreement so certified and acknowledged shall be filed in the office of the Secretary of State, and shall thence be taken and deemed to be the agreement and act of consolidation or merger of the said corporations; and a copy of said agreement and act of con-

solidation or merger, duly certified by the Secretary of State under the seal of his office, shall also be recorded in the offices of the Recorders of the Counties of this State in which the respective corporations so consolidating or merging shall have their original Certificates of Incorporation recorded, or if any of the corporations shall have been specially created by a public Act of the Legislature, then said agreement shall be recorded in the county where such corporation shall have had its principal place of business, and such record, or a certified copy thereof, shall be evidence of the agreement and act of consolidation or merger of said corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger.

"Any one or more corporations organized under the provisions of this Chapter, or existing under the laws of this State, may consolidate or merge with one or more other corporations organized under the laws of any other State or States of the United States of America, if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger. The constituent corporations may merge into a single corporation, which may be any one of said constituent corporations, or they may consolidate to form a new corporation, which may be a corporation of the State of incorporation of any one of said constituent corporations as shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger and such other details and provisions as shall be deemed necessary or proper. There shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the Laws of the State, which are stated in said agreement to be the laws that shall govern said resulting or surviving corporation and that can be stated in the case of a consolidation or

merger. Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and, in the case of a Delaware corporation, in the manner provided in the two immediately preceding paragraphs. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the Secretary of State and said agreement shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this State. A copy of said agreement, duly certified by the Secretary of State under the seal of his office, shall also be recorded as provided in this Section with respect to the consolidation or merger of corporations of this State.

"If the corporation resulting or surviving such consolidation or merger is to be governed by the Laws of any State other than the laws of this State, it shall agree that it may be served with the process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, including any amount fixed by appraisers pursuant to the provisions of Section 61 of this Chapter, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in an action for the enforcement of payment of any such obligation or any amount fixed by appraisers as aforesaid and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Service of such process shall be made by personally delivering to and leaving with the Secretary of State duplicate copies of such process. The Secretary of State shall forthwith send by registered mail one of such copies to such resulting or surviving corporation at its address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated."

Plaintiff's Exhibit 4 Continued.

Delaware Corporation Law Annotated 1937.

"Sec. 60. Consolidation or Merger; Status of Old and New Corporations:—When an agreement shall have been signed, acknowledged, filed and recorded, as in the preceding Section is required, for all purposes of the laws of this State the separate existence of all the constituent corporations, parties to said agreement, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether vested by deed or otherwise, under the laws of this State, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason of this Chapter; provided, however, that all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts,

liabilities and duties had been incurred or contracted by it."

(End of Plaintiff's Exhibit 4)

Mr. Fellows: We offer in evidence Plaintiff's Exhibit 6, which is a stipulation.

Plaintiff's Exhibit 6 reads as follows:

Plaintiff's Exhibit 6.

United States District Court,
District of South Dakota,
Western Division.

Montana-Dakota Utilities Co., a corporation, Plaintiff, v. Northwestern Public Service Company, a corporation, Defendant.	Civil Action File No. 241 W. D. Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action for the purposes of this action only and subject to the reservations hereinafter contained that:

1. There is set forth in the schedule attached hereto, made a part hereof, and marked Schedule 1, a list of officers and directors of the corporation shown in Schedule 1 and the persons so listed were in each case the duly appointed and acting officers or the duly elected and acting directors or both, as the case may be, for the times and in the companies set forth in such Schedule 1.

2. There is set forth in the schedule attached hereto, made a part hereof, and marked Schedule 2, a true and correct description of the securities issued and outstand-

ing by the companies described in such Schedule 2; the aforesaid securities so outstanding were issued by the companies or owned by the companies, as the case may be, in the amounts and for the times set forth in Schedule 2 and the percentages of ownership stated therein for the securities issued by each such compar correctly reflects the proportionate ownership interest of such securities by the companies shown as owning the same.

The parties expressly reserve the right and privilege to object at the trial: (a) to the relevancy or materiality of all or any part of the matters and things in this stipulation and in Schedules 1 and 2 hereof set forth, including all appendices referred to in such Schedules; and (b) to the receipt in evidence of all or any part of the same on the ground of relevancy or materiality. The parties do not, by making this stipulation, admit the relevancy or materiality of the matters and things so set forth.

Dated this 3d day of December, 1947.

PAT MORRISON,
JULIUS SKAUG,
JOHN C. BENSON,
H. F. FELLOWS,
Attorneys for Plaintiff.

SYDNEY K. SCHIFF,
ROYHL & LONGSTAFF,
MAX ROYHL,
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RALPH E. MAUCH,
Attorneys for Defendant.

Schedule 1, page 1.

1936

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Green	Zech	Bard	White	Green
Vice Pres.	Barber	Herrmann	Belden	Kynett	Barber
Vice Pres.	Freeman		Zech	Nichols	Moon
Vice Pres.					Olsen
Vice Pres.					Wilson
Secretary	Belden	Coulter	Coulter	Welsh	Belden
Treasurer	McCormick	McCormick	Bard	Peale	McCormick
Asst. Sec.	Dendtler		Dendtler	Peale	
Asst. Sec.			Evers	McCoy	
Asst. Treas.	Hermann	Dinges	Dinges	Welsh	Dinges
Controller	Zech				Zech
Auditor	Packman	Packman			Packman
Counsel	R. Stevenson				
Director	Dewey	Barber	Green	Barroll	Boissevain
Director	Green	Belden [1]	Bard	Erhard	Dewey
Director	Boissevain	Green	Ross	Kynett	Golding
Director	Golding	Herrmann		Nichols	Green
Director	Porter	McCormick		Welsh	McGee
Director	Shaw	Olsen		White	Porter
Director	Walling	Zech		Zech	Shaw
Director	McGee				Walling
Director	Adams				Adams

Ass't. Cont. Latimer

1. Elected and acted as President for a portion of the year

Schedule 1, page 2.

1937

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Zech	Kruesi	White	Green [1]
Vice Pres.	Barber	Herrmann	Zech	Kynett	Barber
Vice Pres.	Freeman			Nichols	Kruesi [2]
Vice Pres.					Moon [4]
Vice Pres.					Olsen [3]
Secretary	Belden	Coulter	Coulter	Welsh	Belden
Treasurer	McCormick	McCormick	Dinges	Peale	McCormick
Asst. Sec.	Dendtler		Dendtler	McCoy	Dendtler
Asst. Sec.				Peale	
Asst. Treas	Herrmann	Dinges	Herrmann	Welsh	Dinges
Asst. Treas	Dinges				
Controller	Zech				Zech
Auditor	Packman	Packman			Packman
Counsel	R. Stevenson				
Director	Boissevain	Barber	Bard [1]	Barroll	Boissevain
Director	Dewey	Belden	Kruesi	Erhard	Dewey
Director	Golding	Dinges	McCormick	Kynett	Golding
Director	Lindsay	Hermann	Moon	Nichols	Green [1]
Director	McGee	McCormick	Ross	Welsh	Lindsay
Director	Porter	Zech		White	McGee
Director	Smith	Green	Green	Zech	Porter
Director	Wilmers	Olsen	Olsen [1]		Olsen [3]
Director	Green [1]				Wilmers
Director	Shaw				Smith [5]
Director	Olsen				

1. Elected and acted as President for a portion of the year.

1. Elected and acted as President for a portion of the year.

1. Resigned 12/1/37.
2. Designated Exec. V. P. Oct. 1937.
3. Resigned Oct. 1937.
4. Resigned Dec. 1937.
5. Elected 12/1/37.

Note: Vennard elected V. P. in Aug. 1937.

Schedule 1, page 3.

1938

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Belden	Belden [1]	White	Kruesi [1]
Vice Pres.	Belden	B. Stevenson	B. Stevenson	Kynett	Barber
Vice Pres.	Barber				Vennard
Vice Pres.	Freeman	Herrmann	Zech	Nichols	McCormick [3]
Secretary	Belden	Rill	Rill [1]	Welsh	McCormick [3]
Treasurer	McCormick	B. Stevenson	B. Stevenson	Peale	Dinges [4]
Asst. Sec.	B. Stevenson		Dendtler	McCoy	Dendtler
Asst. Sec.	Dendtler			Peale	
Asst. Treas.	B. Stevenson	Dinges	Herrmann	Welsh	Dinges [5]
Asst. Treas.	Dinges				
Controller	Zech				Zech
Auditor	Packman	Packman			Packman
Counsel	R. Stevenson				
Director	Boissevain	Belden	Belden	Barroll	Boissevain
Director	Dewey		Moon		Dewey [2]
Director	Golding	Boissevain	Boissevain	Erhard	Golding
Director	Lindsay	B. Stevenson	Wood	Kynett	Lindsay
Director	McGee	Wood	B. Stevenson	Nichols	McGee
Director	Porter	Barber	Kruesi [1]	Welsh	Porter
Director	Smith	Herrmann	Bard	Zech	Smith
Director	Wilmers	McCormick [2]	McCormick	White	Wilmers
Director		Zech [1]	Ross		

1. Elected and acted as President for a portion of the year.
2. Elected and acted as Treasurer for a portion of the year.

Note: Coulter elected and acted as Secretary for a portion of the year.

1. Messrs. Kruesi, Dinges, and Coulter were elected and acted as President, Treasurer, and Secretary respectively for a portion of the year.

1. Elected May 1938, formerly Exec. V. P.
2. Resigned Feb. 1938.
3. Elected Apr. 1938, having resigned as Treasurer in Apr. 1938.
4. Elected Apr. 1938.
5. Resigned Apr. 1938.

Note: Belden resigned as Secretary Apr. 1938.

11/21/47

Schedule 1, page 4.

1939

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Belden	Belden	White	Kruesi
Vice Pres.	Belden	B. Stevenson	B. Stevenson	Nichols	Vennard
Vice Pres.	Freeman			Kynett	Barber
Vice Pres.					McCormick
Secretary	Belden	Rill	Rill	Welsh	McCormick
Treasurer	McCormick	B. Stevenson	B. Stevenson	Peale	Dinges
Asst. Sec.	B. Stevenson	Scheuerman	Scheuerman	McCoy	Dendtler
Asst. Sec.				Peale	
Asst. Treas.	B. Stevenson	Scheuerman	Scheuerman	Welsh	
Controller	Zech				Zech
Auditor					Packman
Counsel	R. Stevenson				
Director	Boissevain	Belden	Belden	Barroll	Boissevain
Director	Golding	Boissevain	Boissevain	Nichols	Golding
Director	Lindsay	Scheuerman	Scheuerman	White	Lindsay
Director	McGee	B. Stevenson	B. Stevenson	Zech	McGee
Director	Porter	Wood	Wood	Lakin	Porter
Director	Smith				Smith
Director	Wilmers				Wilmers

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Schedule 1, page 5.

1940

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Belden	Belden	White	Kruesi
Vice Pres.	Freeman	B. Stevenson	B. Stevenson	Nichols	Barber
Vice Pres.	Belden			Belden	Vennard
Vice Pres.					McCormick
Secretary	Belden	Rill	Rill	Barroll	McCormick
Treasurer	McCormick	B. Stevenson	B. Stevenson	Peale	Dinges
Asst. Sec.	B. Stevenson	Scheuerman	Scheuerman	Peale	Dendtler
Asst. Sec.				B. Stevenson	
Asst. Sec.				McCoy	
Asst. Treas.	B. Stevenson	Scheuerman	Scheuerman	B. Stevenson	
Controller	Zech			McClanahan	Zech
Auditor					Packman
Counsel					
Director	Boissevain	Belden	Belden	Barroll	Boissevain
Director	Golding	Boissevain	Boissevain	Lakin	Golding
Director	Lindsay	Scheuerman	Scheuerman	Nichols	Lindsay
Director	McGee	B. Stevenson	B. Stevenson	White	McGee [2]
Director	Smith			Zech	Porter [1]
Director	Wilmers				Smith
Director	Porter				Wilmers

1. Resigned Nov. 1940.

2. Resigned Dec. 1940.

Schedule 1, page 6.

1941

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Belden	Belden	White	Kruesi
Vice Pres.	Freeman	B. Stevenson	B. Stevenson	Nichols	Barber
Vice Pres.	Belden			Belden	Vennard
Vice Pres.					McCormick
Secretary	Belden	Rill	Rill	Barroll	McCormick
Treasurer	McCormick	B. Stevenson	B. Stevenson	C. McC. Peale	Dinges
Asst. Sec.	B. Stevenson [1]	Scheuerman	Scheuerman	McCoy	Dendtler
Asst. Sec.				Peale	
Asst. Sec.				B. Stevenson	
Asst. Treas.	B. Stevenson	Scheuerman	Scheuerman	B. Stevenson	
Controller	Zech			McClanahan	Zech
Auditor					Packman
Counsel	R. Stevenson				
Director	Boissevain	Belden	Belden	Barroll	
Director	Freeman	Boissevain	Boissevain	Lakin	Kruesi [1]
Director	Golding	Scheuerman	Scheuerman	Nichols	Lane [1]
Director	Lindsay	B. Stevenson	B. Stevenson	White	Lieberman [1]
Director	McGee			Zech	Magraw [1]
Director	Wilmers				Neff [1]
Director	Smith				Smith [1]

1. Elected and acted as Treasurer for a portion of the year.

1. Directors after Special Shareholders Meeting of 3/27/41.

Note: Messrs. Boissevain and Wilmers in Jan. 1941, and Lindsay and Golding in March, 1941 resigned as directors.

11/21/47

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1942

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Belden	Belden	White	Kruesi
Vice Pres.	Belden	B. Stevenson	B. Stevenson	Belden	Vennard
Vice Pres.	Freeman			Nichols	Barber
Vice Pres.					McCormick
Secretary	Belden	Scheuerman [1]	Scheuerman [1]	Barroll	McCormick
Treasurer	B. Stevenson	B. Stevenson	B. Stevenson	Peale	Dinges
Asst. Sec.	B. Stevenson	O'Donnell		B. Stevenson	Dendtler
Asst. Sec.				McCoy	
Asst. Sec.		Scheuerman		Peale	
Asst. Treas.		Scheuerman	Scheuerman	B. Stevenson	
Controller				McClanahan	Packman [1]
Auditor					Higley [2]
Counsel	R. Stevenson				
Director	Boissevain	Belden	Belden	Nichols	Campbell [3]
Director	Golding	Boissevain	Boissevain	White	Kruesi
Director	Lindsay	Long	Scheuerman	Barroll	Lane
Director	McGee	Scheuerman	B. Stevenson	Lakin	Magraw
Director	Smith	B. Stevenson		Zech	Neff
Director	Wilmers				Smith
Director					Watt [3]

1. Rill elected and acted as Secretary for a portion of the year.

1. Rill elected and acted as Secretary for a portion of the year.

1. Elected 3/1/42 to succeed Zech who resigned 3/1/42.
2. Elected Mar. 1942.
3. Elected Mar. 1942.

Note: Carpenter elected Ass't to President Sept. 1942, Lieberman, a director, died during year.

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1943

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Belden	Belden	White	Kruesi
Vice Pres.	Belden	B. Stevenson	B. Stevenson	Belden	Barber
Vice Pres.	Freeman				Vennard
Vice Pres.					McCormick [1]
Secretary	Belden	Scheuerman	Scheuerman	Barroll	McCormick [2]
Treasurer	B. Stevenson	B. Stevenson	B. Stevenson	Peale	Dinges
Asst. Sec.	B. Stevenson	Mitchell	Mitchell	B. Stevenson	Dendtler
Asst. Sec.		O'Donnell	O'Donnell	McCoy	
Asst. Sec.				Peale	
Asst. Treas.		Scheuerman	Scheuerman	B. Stevenson	Gass [3]
Controller				McClanahan	Packman
Auditor					Higley
Counsel	R. Stevenson				
Director	Boissevain	Beasley	Belden	Barroll	Campbell
Director	Golding	Belden	Boissevain	Briggs	Kruesi
Director	Lindsay	Boissevain	Scheuerman	Lakin	Lane
Director	McGee	Scheuerman	B. Stevenson	Nichols	Magraw
Director	Smith	B. Stevenson		White	Neff
Director	Wilmers	Long			Smith
Director					Watt

1. Died during year.
2. Died during year and succeeded by Carpenter, Ass't. to Pres. in Nov. 1943.
3. Elected Nov. 1943.

Schedule 1, page 9.

1944

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Smith	Belden	Belden	White	Kruesi
Vice Pres.	Freeman		B. Stevenson	McClanahan	Barber
Vice Pres.	Belden	B. Stevenson		Belden	Vennard
Secretary	Belden	Scheuerman	Scheuerman	Barroll	Carpenter [1]
Treasurer	B. Stevenson	B. Stevenson	B. Stevenson	Peale	Dinges
Asst. Sec.	B. Stevenson	Mitchell	Mitchell	B. Stevenson	Dendtler
Asst. Sec.				Peale	
Asst. Treas.	Scheuerman	Scheuerman	Scheuerman	B. Stevenson	Gass
Controller					Packman
Auditor					Higley
Counsel	R. Stevenson				
Director	Boissevain	Beasley	Belden	Barroll	Campbell
Director	Golding	Belden	Boissevain	Belden	Kruesi
Director	Lindsay	Boissevain	Scheuerman	Lakin	Lane
Director	Smith	Scheuerman	B. Stevenson	Nichols	Magraw
Director	Wilmers	B. Stevenson		White	Neff
Director	McGee			Briggs	Smith
Director					Watt

1. Also Ass't. to President.

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1945

	Middle West Corporation	North West Utilities	United Public Service	United Public Utilities	Middle West Service Company
President	Freeman [1]	Belden	Belden	White	Kruesi
Vice Pres.	Belden	B. Stevenson	B. Stevenson	Belden	Vennard
Vice Pres.	Freeman [1]				Barber [1]
Secretary	Belden	Scheuerman	Scheuerman	Barroll	Carpenter [4]
Treasurer	B. Stevenson	B. Stevenson	B. Stevenson	Oakley	Dinges
Asst. Sec.	B. Stevenson	Mitchell	Mitchell	B. Stevenson	Dendtler
Asst. Sec.				O'Leary	
Asst. Treas.	Scheuerman	Scheuerman	Scheuerman	B. Stevenson	Gass
Controller					Packman
Auditor					McClanahan [2]
Counsel	R. Stevenson				
Director	Boissevain	Beasley	Belden	Barroll	Campbell
Director	Freeman	Belden	Boissevain	Belden	Kruesi
Director	Golding	Boissevain	Scheuerman	Briggs	Lane
Director	Lindsay	Scheuerman	B. Stevenson	Lakin	Magraw
Director	R. Stevenson	B. Stevenson		Nichols	Neff
Director	Smith			White	Watt
Director	Wilmers				Smith [3]
Director	McGee				

1. Succeeded Smith as President during year.

1. Resigned 12/15/45.
2. Elected Mar. 1945 to succeed Higley who resigned Feb. 1945
3. Resigned 7/31/45.
4. Also Ass't. to Pres.

11/21/47

Schedule 1, Page 11.

The full names of the persons above listed as officers or directors of the foregoing corporations, and the places in or about which they now reside or now have their respective offices or have resided or have had their offices during the period from 1935 through 1945, or some part thereof, are as follows:

Daniel C. Green	Chicago, Ill.
J. E. Barber	" "
William C. Freeman	" "
Gail Belden	Wilmington, Del.
Ove. B. Dendtler	Winnetka, Ill.
C. V. Dinges	Chicago, Ill.
Oliver E. McCormick	" "
C. C. Herrmann	" "
Nicholas P. Zech	" "
C. A. Packman	" "
Charles S. Dewey	" "
Adolphe Boissevain	New York, N. Y.
Robert N. Golding	Chicago, Ill.
Irving L. Porter	" "
W. A. Shaw	" "
W. G. Walling	" "
Hugh McGee	New York, N. Y.
A. C. Coulter	Chicago, Ill.
E. A. Olsen	" "
Ralph Bard	" "
Thompson Ross	" "
Samuel W. White	" "
Gerald P. Kynett	Philadelphia, Pa.
Herbert L. Nichols	Dallas, Texas
Herbert S. Welch	Philadelphia, Pa.
Clifford McChesney Peale	Chicago, Ill.
Lee Barroll	Huntindon Valley, Pa.
Henry Alker Erhard	Wenham, Mass.
V. H. Moon	Chicago, Ill.
J. B. Wilson	" "
Purcell L. Smith	" "
Ralph D. Stevenson	" "

Martin Lindsay	Chicago, Ill.
C. K. Wilmers	" "
Frank E. Kruesi	Evanston, Ill.
Helen McCoy	Chicago, Ill.
Edwin Vennard	Kenilworth, Ill.
B. P. Stevenson	Wilmington, Del.
T. M. Rill	" "
R. R. Wood	" "
L. J. Scheuerman	" "
C. E. Lakin	Greenville, Ohio
K. D. Carpenter	Evanston, Ill.
R. K. Lane	Chicago, Ill.
A. Lieberman	" "
L. A. Magraw	" "
G. C. Neff	" "
James H. Buell	" "
G. E. Long	Milwaukee, Wis.
E. K. Higley	Chicago, Ill.
R. M. Watt	" "
P. B. Campbell	" "
G. H. Beasley	Huntington, Ind.
L. H. Mitchell	Wilmington, Del.
K. E. Oakley	Chicago, Ill.
Jane O'Leary	" "
J. T. Gass	" "
Rodman McClanahan	Evanston, Ill.

Schedule 1, Page 12.

The complete name, state, and year of incorporation of each of the corporations referred to on preceding pages 1 to 10 of this schedule is as follows:

The Middle West Corporation (Delaware, 1935)
North West Utilities Company (Delaware, 1918)
United Public Service Corporation (New Jersey, 1934)
United Public Utilities Corporation (New Jersey, 1934)
Middle West Service Company (Illinois, 1936)

[Conclusion of Schedule 1]

Schedule 2.

1. Northwestern Public Service Company (Delaware, 1923) had issued and outstanding during the period 1932 to 1945, the securities listed in the appendix attached hereto, made a part hereof, and marked Appendix A, in approximately the amounts stated therein. Of those securities listed in Appendix A hereto North West Utilities Company (Delaware, 1918) owned those securities listed in the appendix attached hereto, made a part hereof, and marked Appendix B, in approximately the amounts and in the years set forth therein. Of those securities listed in Appendix A hereto, The Middle West Corporation, or its predecessor, Middle West Utilities Company, owned those securities listed in the appendix attached hereto, made a part hereof, and marked Appendix C, in approximately the amounts and in the years set forth therein.

Neither issue of preferred stock listed in Appendix A hereof was entitled to vote except upon twelve months' default in dividend payments. From December 31, 1932, to December 1, 1934, the owners and holders of such preferred stock were not entitled to vote and the owners and holders of the common stock had all of the voting control. From December 1, 1934 to September 3, 1940, the owners and holders of the preferred stock issues had the right to vote (because of a twelve months' default in dividend payments) and during such period the owners and holders of the common stock possessed 54.9% voting control of the corporation. From September 3, 1940, to December 31, 1945, the owners and holders of the preferred stock issues were not entitled to vote and the owners and holders of the common stock had 100% of the voting control.

Northwestern Public Service Company became a subsidiary of North West Utilities Company on or about October 1, 1929.

North West Utilities Company under date of March 29, 1946 sold and transferred all its shares of Common Stock (being all of the shares of Common Stock then outstanding in Northwestern Public Service Company to Bear, Stearns & Co., an investment banking partnership having offices in New York, Chicago and other cities. The shares

of capital stock so acquired by Bear, Stearns & Co. were subsequently reclassified as and changed into 300,000 shares of Common Stock of the par value of $3 per share. Under date of February 18, 1947, the 300,000 shares of Common Stock owned by Bear, Stearns & Co., together with 110,000 additional shares of Common Stock then issued by Northwestern Public Service Company, were sold by Bear, Stearns & Co. and Northwestern Public Service Company, respectively, to an underwriting syndicate which distributed to the public the 410,000 shares of Common Stock so acquired. From and after March 29, 1946, neither North West Utilities Company nor The Middle West Corporation or any of its subsidiaries owned or held any of the shares of capital stock of Northwestern Public Service Company.

2. North West Utilities Company (Delaware, 1918) had issued and outstanding on December 31, 1932, and during the period following that date through and including December 31, 1945, the following securities in approximately the amounts stated:

7% Cumulative Prior Lien $100 par Preferred Capital Stock	44,000 shares
7% Cumulative $100 par Preferred Capital Stock	60,755 shares
$ 6 Cumulative no par Preferred Capital Stock	24,000 shares
Common $1 par Capital Stock	260,531 shares

Of the securities of North West Utilities Company so issued and outstanding during the period 1932 to 1945, The Middle West Corporation or its predecessor Middle West Utilities Company owned not less than 9,997 shares nor more than 26,133 shares from 1932 through 1940 and 26,573 shares from December 31, 1941 to December 31, 1945 of the 7% Cumulative Prior Lien $100 par Preferred Capital Stock; not less than 19,697 shares beginning in 1932, nor more than 21,687 shares from December 31, 1937 to December 31, 1945 of the 7% Cumulative $100 par Preferred Capital Stock; all of the $6 Preferred Capital Stock; and all of the Common $1 par Capital Stock. All classes of North West's capital stock, both preferred and common,

are and were at all material times entitled to vote. The Middle West Corporation and its predecessor had, as a result of their holdings, voting control of North West aggregating 80.72% as of December 31, 1932. This percentage was at no time lower. It gradually increased to 85.49% as of December 31, 1945.

North West Utilities Company became a subsidiary of Middle West Utilities Company on or about January 3, 1919.

3. United Public Utilities Company (New Jersey, 1927) was in receivership during the period 1932 to 1935. During that period all of its outstanding Common Stock (181,000 shares) was owned by United Public Service Company (New Jersey, 1927), which company was also in receivership. The Common Stock and the Preferred Stock after default, were entitled to vote. United Public Service Company had, as a result of its holdings, voting control of United Public Utilities Company aggregating not less than 51%, as of December 31, 1931, and continuing thereafter until the dissolution of United Public Utilities Company.

Pursuant to a reorganization proceeding in the United States District Court for the Northern District of Illinois, Eastern Division, United Public Utilities Corporation was organized in New Jersey in 1934 and became the successor of United Public Utilities Company.

Allied Service Company (a subsidiary of Middle West Utilities Company) owned $22,000 of United Public Utilities Company First Lien 6% Gold Bonds and $429,000 of that company's First Lien 5½% Gold Bonds as collateral security for a $470,000 note of the latter company, which note was cancelled. Middle West Utilities Company owned $89,300 of United Public Utilities Company First Lien 6% Gold Bonds, $151,000 of that company's First Lien 5½% Gold Bonds, 1,512 shares of that company's $6 Preferred Stock (no par value), and 39 shares of that company's $5.75 Preferred Stock (no par value).

Under the aforesaid plan of reorganization of United Public Utilities Company, Allied Service Company re-

ceived in exchange for the securities of United Public Utilities Company, which it owned, the following securities of United Public Utilities Corporation:

6% Collateral Trust Bonds in the principal amount of	$ 11,000.00
5½% Collateral Trust Bonds in the principal amount of	214,500.00
10-year 5% Interest Scrip due 1945 in the amount of	31,143.75
Preferred Stock (no par value) $3 Series	220 shares
Preferred Stock (no par value) $2.75 Series	4,290 shares
Class A Common Stock ($1 par value)	4,510 shares

Under said plan of reorganization Middle West Utilities Company received in exchange for the securities of United Public Utilities Company, which it owned, the following securities of United Public Utilities Corporation:

6% Collateral Trust Bonds in the principal amount of	$44,650.00
5½% Collateral Trust Bonds in the principal amount of	75,500.00
10-year 5% Interest Scrip due 1945 in the amount of	17,078.75
Preferred Stock (no par value) $3 Series	893 shares
Preferred Stock (no par value) $2.75 series	1,510 shares
Class A Common Stock ($1 par value)	2,403 shares
Class B Common Stock ($1 par value)	2,326½ shares

The securities received by Middle West Utilities Company were, in turn, delivered to its successor, The Middle West Corporation. Under date of November 30, 1935, The Middle West Corporation acquired from Allied Public Service Company the securities of United Public Utilities Corporation, owned by Allied, as described above.

In the year 1937 The Middle West Corporation sold all of the 10-year 5% Interest Scrip due 1945 which it owned; in the year 1938 it sold all of the 6% Collateral Trust

Bonds which it owned and also sold $18,000 in principal amount of the 5½% Collateral Trust Bonds which it owned; and in the year 1939 The Middle West Corporation sold all of the remaining securities of United Public Utilities Corporation which it owned.

4. United Public Utilities Corporation (New Jersey, 1934) had issued and outstanding during all or a portion of the period from December 31, 1934, through December 31, 1945, the securities described as follows and the amounts thereof did not exceed those shown for December 31, 1934, and were not less than those shown for December 31, 1945:

	Dec. 31, 1934	Dec. 31, 1945
Collateral Trust Bonds (Convertible) 6% Series A	$3,986,000.00	None
Collateral Trust Bonds (Convertible) 5½% Series B	3,492,400.00	None
10-year 5% Interest Scrip due 1945	1,078,105.00	None
$3 Preferred No Par Capital Stock	79,720 shares	79,441 shares
$2.75 Preferred No Par Capital Stock	69,848 shares	69,479 shares
Class A Common $1 Par Capital Stock	149,568 shares	148,920 shares
Class B Common $1 Par Capital Stock	224,352 shares	221,380 shares

The Collateral Trust Bonds, Series A, which had been reduced to $2,250,200 at the end of 1944, and the Collateral Trust Bonds Series B, which had been reduced to $3,241,800 at the end of 1944 were all paid and cancelled at the beginning of July, 1945. The 10-year Interest Scrip, which had been reduced to $348,557 at the end of 1942, was retired in full during the year 1943. The Class A and Class B Common Stock constituted a single class of Common Stock without distinction after July 1, 1945, and as of December 31, 1945, there were 370,300 shares of said stock outstanding.

Of these securities, United Public Service Corporation (New Jersey, 1934) at all times from 1935 to 1945 owned 148,055 shares of the Class B Common Stock representing 40%, within a fraction, of the total Common Stock of both Classes A and B. After July 1, 1945, these shares constituted 28.5% of all shares entitled to vote. From 1935 to July 1, 1945, the Class B Common Stock, as a class, was entitled to elect only one of the directors of United Public Utilities Corporation. The Class B Common Stock was not otherwise entitled to vote except at such time as 50% of the total of the company's Collateral Trust Bonds and of its Preferred Capital Stock had either been converted or paid and retired and said Collateral Trust Bonds were retired shortly prior to July 1, 1945. The Preferred Capital Stock of United Public Utilities Corporation was not entitled to vote except on default in payment of eight consecutive quarterly dividends and then it was entitled to equal vote with the Class A Common Stock. Such default occurred in 1938 and has since continued.

5. United Public Service Corporation (New Jersey, 1934) had issued and outstanding at all times from 1935 to 1945 not less than 305,992 shares of its Common Capital Stock having a par value of $1 per share, reduced to 25¢ per share in 1942.

Of these shares The Middle West Corporation (Delaware, 1935) owned at all times from 1935 to 1945 not less than 153,519 shares. The number of shares so owned increased from time to time and aggregated, in 1946, 172,393 shares. From 1935 to 1945 The Middle West Corporation owned not less than 48.65% nor more than 56.34% of the voting shares of United Public Service Corporation.

6. The Middle West Corporation (Delaware, 1935) at all times from 1936 to 1945 owned all of the issued and outstanding Capital Stock consisting of 100 shares of no par Common of Middle West Service Company (Illinois, 1936); and at all times from 1935 to 1945 owned all of the issued and outstanding Capital Stock consisting of 350 shares of no par Common of Illinois Stock Transfer Company (Illinois, 1936).

The Middle West Corporation (Delaware, 1935) was the successor to Middle West Utilities Company, a Delaware Corporation, reorganized under Section 77B of the Bankruptcy Act in the United States District Court for the Northern District of Illinois, Eastern Division. Said reorganization followed the institution of receivership proceedings in the same court on April 15, 1932.

From 1932 to 1935 Middle West Utilities Company owned 430,439 shares, or 96.4% of the outstanding Common Capital Stock of United Public Service Company (New Jersey, 1927), which company was in receivership. The Common Stock, and the Preferred Stock after default, were entitled to vote. Middle West Utilities Company had, as a result of its holdings, voting control of United Public Service Company aggregating not less than 51% as of December 31, 1931 and continuing thereafter until the dissolution of United Public Service Company.

Appendix A.

* List of Securities of Northwestern Public Service Company Issued and Outstanding as of December 31 of Each of the Years Indicated

Year	1	2	3	4	5	6	7
1932	$8,570,000	$ 222,000	$	$	24,682	18,359	52,150
1933	8,570,000	155,000			24,567	18,314	52,150
1934	8,504,000				24,567	18,314	52,150
1935	8,171,000				24,567	18,314	52,150
1936	7,962,000				24,567	18,314	52,150
1937	7,962,000				24,567	18,314	52,150
1938	7,807,000				24,567	18,314	52,150
1939	7,758,500				24,531	18,314	52,150
1940			500,000	6,000,000	24,389	18,254	52,150
1941			400,000	6,000,000	23,966	18,128	52,150
1942			300,000	5,276,000	23,725	17,829	52,150
1943				5,276,000	23,069	17,829	52,150
1944				5,276,000	22,518	17,829	52,150
1945				5,276,000	22,023	17,829	52,150
					22,023	17,829	52,150

* Explanation of Information Contained in Columns 1 to 7, Both Inclusive:

1—Amount in dollars of First Mortgage 5% Series A Bonds maturing January 1, 1957.

2—Amount in dollars of Huron Light & Power Company First Mortgage 6% Bonds maturing May 1, 1937.

3—Amount in dollars of 2½% Serial Bank Notes.

4—Amount in dollars of First Mortgage 4% Series A Bonds maturing August 1, 1970.

5—Amount in shares of 7% Preferred Capital Stock.

6—Amount in shares of 6% Preferred Capital Stock.

7—Amount in shares of Common no par Capital Stock.

Appendix B.

* Securities Issued by Northwestern Public Service Company and Owned by North West Utilities Company

Year	1	2
1932	45,000	52,150
1933	45,000	"
1934	45,000	"
1935	25,000	"
1936	15,000	"
1937	5,000	"
1938		"
1939		"
1940		"
1941		"
1942		"
1943		"
1944		"
1945		"

* Explanation of Information contained in Columns 1 and 2:

1—Amount in dollars of First Mortgage 5% Series A Bonds maturing January 1, 1957.

2—Amount in shares of Common no par Capital Stock.

Appendix C.

* Securities Issued by Northwestern Public Service Company and Owned by The Middle West Corporation or by Middle West Utilities Company, Its Predecessor

Year	1	2	3
1932	200,000		
1933	200,000		
1934	200,000		
1935	203,000		
1936	203,000		
1937	116,000		
1938	116,000		
1939	116,000		
1940			
1941		315	105
1942		315	105
1943		315	105
1944		315	105
1945		315	105

* Explanation of Information contained in Columns 1, 2 and 3:

1—Amount in dollars of First Mortgage 5% Series A Bonds maturing January 1, 1957.

2—Amount in shares of 7% Preferred Capital Stock.

3—Amount in shares of 6% Preferred Capital Stock.

(End of Plaintiff's Exhibit 6.)

Mr. Rohyl: To which the defendant objects as incompetent, irrelevant and immaterial, and not binding upon this defendant, and not within the issues in this case; all dealing with holding company stock or holding company directorates, the sole fraud or overreaching in the instant action, as having been claimed and alleged as having been done by individuals that composed the interlocking boards of directors and officers.

The Court: I assume the schedules refer to officers and companies named in this action?

Mr. Benson: This stipulation goes to the ownership of subsidiary companies by the Middlewest Utilities Co., and later by the Middlewest Corporation, when that came out of receivership, and it shows the lines of ownership had been through acquisition of Northwestern Public Utilities Co. in one direction, and lines of ownership and control down through finally United Public Service Co. in the other direction, down to the property that we bought. Then it goes to the point of showing in this instance where were common officers, running down through from the top of the defendant, common officers running down through from the top to the holding company that owned the companies that the plaintiff in this case bought. I don't understand the objection.

The Court: It will be received.

Plaintiff's Exhibit 7 was received, consisting of a copy of the same tabulation which is Exhibit A to the complaint (R. p. 28, supra).

Plaintiff's Exhibit 8, which was received in evidence, consists of an original of the general conveyance by Dakota Public Service Company to plaintiff, dated October 19, 1945, portions of which are as follows:

Whereas Montana-Dakota Utilities Co. is the owner of all of the issued and outstanding stock and other securities of Dakota Public Service Company consisting of 8,370 shares of Common Stock without par value, $1,000,000 of First and Refunding Mortgage Bonds due October 1, 1946, $2,500,000 of Notes Payable due July 1, 1949

and a $1,335,794 Income Note Payable due July 1, 1949, and

Whereas it has been deemed advisable in the judgment of the Board of Directors of Dakota Public Service Company and most for the benefit of that corporation and of Montana-Dakota Utilities Co. as the holder of all of its outstanding securities that it would be dissolved, and Montana-Dakota Utilities Co. as the holder of all of the outstanding stock and other securities of Dakota Public Service Company has consented in writing that a dissolution of Dakota Public Service Company shall take place on this date, and the Board of Directors of Dakota Public Service Company has by resolution adopted a plan of liquidation of that Company providing that it shall be completely liquidated on this date and that all the property and assets of Dakota Public Service Company, of every kind and nature, shall on this date be transferred and distributed to Montana-Dakota Utilities Co., subject to and charged with all debts and liabilities of Dakota Public Service Company of every kind and nature other than the outstanding stock and other securities held by Montana-Dakota Utilities Co. which shall be cancelled.

Now, Therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, and in complete cancellation of all of the outstanding stock and other securities of Dakota Public Service Company hereinbefore referred to as held by Montana-Dakota Utilities Co. and in accordance with said plan of liquidation, Dakota Public Service Company, the party of the first part, does hereby grant, quitclaim, convey, assign, transfer and set over unto Montana-Dakota Utilities Co., party of the second part, its successors and assigns, forever, all of its properties and assets of every kind and nature, whether real, personal or mixed, both tangible and intangible, subject to and charged with all debts and liabilities of Dakota Public Service Company of every kind and nature, except the stock and other securities of Dakota Public Service Company heretofore held by Montana-Dakota Utilities Co. which are to be cancelled.

To have and to hold the same to the said party of the second part, its successors and assigns, forever.

The party of the first part hereby covenants that upon written request by the party of the second part it will forthwith execute, acknowledge and deliver all such deeds, assignments and other instruments and will take all such further action as may, in the opinion of the counsel for the party of the second part, be necessary or advisable for better securing and confirming unto the second party the property and assets hereby conveyed.

Plaintiff's Exhibit 9 to 9-Q, which was received, consists of minutes of action of the plaintiff as sole stockholder of Dakota Public Service Company and of the directors of Dakota Public Service Company on October 19, 1945. It shows in part that plaintiff had purchased all of the stock of Dakota Public Service Company from United Public Utilities Corporation on October 19, 1945; that plaintiff as such sole stockholder accepted the resignations of Messrs. Samuel W. White, A. B. Sanborn, G. R. McArthur, William M. Dunn and J. F. Buckmier as directors of Dakota Public Service Company and designated Messrs. R. M. Heskett, C. W. Smith, F. R. Gamble, W. L. Hayes and H. N. Elvig as directors of Dakota Public Service Company, and that plaintiff as such sole stockholder directed said new board of directors to meet immediately for the purposes, among other things, of appointing new officers of Dakota Public Service Company and proposing a plan for the liquidation of said Company and transferring all of its assets, subject to liabilities, to the plaintiff and proposing the dissolution of Dakota Public Service Company; and said Exhibit shows that the newly elected directors of Dakota Public Service Company accepted the resignations of the former officers of Dakota Public Service Company, being A. B. Sanborn, G. R. McArthur, William M. Dunn, J. F. Buckmier and Margaret Frost, and duly elected new officers and adopted a plan of liquidation of Dakota Public Service Company providing that said Company should be completely liquidated on October 19, 1945, and that all

property and assets of Dakota Public Service Company of every kind and nature should be transferred and distributed to Montana-Dakota Utilities Co., subject to and charged with all the debts and liabilities of Dakota Public Service Company other than the securities of Dakota Public Service Company on October 19, 1945, owned by Montana-Dakota Utilities Co., and that the transfer of the property of Dakota Public Service Company to Montana-Dakota Utilities Co. should be made in complete cancellation of all the issued and outstanding stock and other securities of Dakota Public Service Company, and that

> "Dakota Public Service Company shall be legally dissolved after October 19, 1945, by the filing of an appropriate certificate of dissolution with the Secretary of State of Delaware before December 31, 1945, in accordance with the applicable provisions of the Delaware Corporation Law",

and providing that the officers of Dakota Public Service Company, or any of them, be authorized and instructed to execute all conveyances, deeds, assignments and other legal documents and do all other acts necessary or convenient fully to consummate the foregoing plan of liquidation, and instructing the officers of Dakota Public Service Company to execute and file in the office of the Secretary of State of the State of Delaware the certificate of dissolution hereinabove referred to, and to do all other acts necessary to consummate the liquidation and dissolution of Dakota Public Service Company, and said Exhibit contains the following document executed by Montana-Dakota Utilities Co., viz.:

> "Consent to Liquidation and Dissolution of Dakota Public Service Company.
>
> Montana-Dakota Utilities Co. as the holder of record of all of the issued and outstanding stock and other securities of Dakota Public Service Company does hereby consent to and approve of all resolutions adopted by the Board of Directors of Dakota Public Service Company at the meeting thereof held October 19, 1945, including the resolutions proposing the liq-

uidation and dissolution of [illegible] Service Company, and Montana-Dakota [illegible] does hereby consent to and approves of the [illegible] Dakota Public Service Company on October [illegible] and does hereby consent that the dissolution of [illegible] Public Service Company shall take place after [illegible] ber 19, 1945, and before December 31, 1945.

MONTANA-DAKOTA UTILITIES CO.,

By R. M. HESKETT,
President."

Plaintiff offered the following Exhibits, which were received:

Plaintiff's Exhibit 10, consisting of certified copy of an order of the Federal Power Commission authorizing plaintiff to acquire the securities of Dakota Public Service Company, to merge plaintiff's facilities with the electric utility facilities of Dakota Public Service Company, and to issue securities, and reciting that Montana-Dakota Utilities Co., referred to in said order of said Commission as Applicant,

> "proposes * * * to acquire by purchase from United Public Utilities Corporation, all of the outstanding securities of Dakota, consisting of 8,370 shares of common stock without par value, $1,000,000 of First and Refunding Mortgage Bonds due October 1, 1946, $2,500,000 of Notes Payable due July 1, 1949, and a $1,335,794 Income Note Payable due July 1, 1949, for a base price of $6,521,060.74. Applicant further proposes, immediately following its purchase of such securities, to cause the liquidation of Dakota; and to acquire all of the electric utility and other properties, and to assume the liabilities, of Dakota."

Among other things, the order recites the following:

* * * * * * *

> "It appears to the Commission from the verified application, as amended and supplemented, the record

thereon and the Annual Reports (F. P. C. Form No. 1) and Power System Statements (F. P. C. Form No. 12) for 1944 of Applicant and Dakota, that:

"(a) Applicant proposes, pursuant to a contract dated July 2, 1945, between United Public Utilities Corporation and Applicant (a copy of which is made a part of the application as a portion of Exhibit K-1 thereto), to acquire by purchase from United Public Utilities Corporation, all of the outstanding securities of Dakota, * * * for a base price of $6,321,060.74. Applicant further proposes, immediately following its purchase of such securities, to cause the liquidation of Dakota; and to acquire all of the electric utility and [illegible] properties, and to assume the liabilities, of

* * * * * * *

"(d) The [illegible] through holding [illegible] intercorporate relationships, between Applicant and [illegible] or ownership of securities, [illegible] holding [illegible] Dakota. Applicant is neither Dakota [illegible] wholly-owned [illegible] a subsidiary of one. Utilities [illegible]. The [illegible] United Public presently [illegible] by Dakota co[illegible] properties transmission and distribution facilities [illegible] an electric utility system in north central South [illegible] and adjacent territory in southern North Dakota. The service areas of Applicant and Dakota are contiguous and upon acquisition of Dakota's properties, Applicant proposes to interconnect the two systems.

* * * * * * *

"(i) Written notice of the aforesaid application has been given to the Board of Railroad Commissioners of Montana, the Public Service Commission of North Dakota, the Public Utilities Commission of South Dakota, the Public Service Commission of Wyoming, the Railroad and Warehouse Commission of Minnesota, and to the Governor of each of those States. Notice of the application was also published on July 26, 1945, in Volume 10, Federal Register, at page 9282, stating that any person desiring to be heard or to make any

protest with reference to the application should file a petition or protest on or before August 10, 1945. No protest or petition or request to be heard in opposition to the granting of such application has been received."

Among the findings of the Commission are the following:

"The proposed acquisition of securities and merger of facilities should result in improvement in efficiency

and economy of operations; and, upon the conditions hereinafter provided, will be consistent with the public interest."

Plaintiff's Exhibit 11, consisting of certified copy of an order of the Securities and Exchange Commission authorizing the sale by United Public Utilities Corporation to plaintiff of all of the stock and securities of Dakota Public Service Company and of Knife River Coal Mining Company.

Plaintiff's Exhibit 12, consisting of certified copy of an order of the Public Service Commission of the State of North Dakota authorizing plaintiff to purchase the securities of Dakota Public Service Company, to acquire its utility properties by liquidation and to issue securities.

Plaintiff's Exhibits 13 and 14, consisting of certified copies of Historical and Cost of Reproduction Appraisals as of December 31, 1937 made for the Board of Railroad Commissioners for the State of North Dakota relating to Northern Power and Light Company and North Dakota Power & Light Company. These reports show Overhead Construction Costs of 10% to 12%, both for Historical Cost and for Cost Reproduction.

DAN S. HELMICK was called as a witness by the plaintiff and being duly sworn, testified as follows:

Direct Examination, by Mr. Fellows.

Q. Is your name Dan S. Helmick? A. Yes.

Q. Where do you live? A. Minneapolis, Minnesota.

Q. What is your occupation?

A. I am a member of a firm of private consulting engineers.

Q. In what line of business?

A. In the design of various types of power plants, and engineering service in connection with the generation and use of electric power.

Q. How old are you? A. 55.

Q. What has been your professional education?

A. I graduated in 1915, College of Engineering, University of Minnesota.

Q. And your experience along the lines of that education?

A. On graduation I became junior engineer, U. S. Government. I was then in the corps of engineers for about two years. I came back to the states and was again an engineer with the U. S. government. In 1920 I went with the St. Anthony Falls Water Power Co., a Minneapolis mill company located in Minneapolis, as an engineer. I left there in 1922 to become associated with a gentleman by the name of Ralph T. Thomas. From 1922 we ran a consulting engineering practice which constituted about the same lines that I am doing with my present firm. In other words, plans and specifications for power plants, for various utilities in the middle west, principally for private corporations in the middle west, such as Minnesota Light and Power Co., Green Bay and Mississippi Canal Co. I could go on.

Q. Name some in South Dakota, and this general territory.

A. About 1926 we made appraisal of the then properties of the Northern Power and Light Co. A year or so later we were the engineers on the installation of this turbine and two boilers at Mobridge. In 1937 I became senior member of our firm of consulting engineers in Minneapolis. Since that time we have been consultants of power plants for practically all of the independent packing plants in the middle west, including John Morrell & Co. at Topeka, Ottumwa and here in Sioux Falls. We have done a lot of power plant work for paper mills. We have done a considerable amount of power plant work for municipalities and utilities. Among them I might mention we are doing work for Minneapolis Gas Light Co., Ottertail Power Co., University of Minnesota. Marshville, Wisconsin, and also right here in the city of Sioux Falls.

Q. Of what professional societies are you a member?

A. American Society of Civil Engineers. I am registered engineer in my native state of Minnesota. In Iowa. I am also registered with the National Registration of Engineers in South Carolina. If you are registered there it is on examination. There is reciprocity in engineering services in most of the states.

Q. Did you hold a commission in the army? A. Yes.

Q. What was that? A. I was captain of engineers.

Q. In your experience have you become familiar with the construction and generating costs of electric systems?

A. Yes.

Q. Familiar with operating details and problems of such systems? A. Yes.

Q. Both hydraulic, steam and Diesel power? A. Yes.

Q. Is Exhibit 15 a map which was drawn by you?

A. The map was not drawn by me personally but was drawn under my supervision by Mr. Gravenger.

Plaintiff's Exhibit 15 was received, which is the following map:

Plaintiff's exhibit 15
(Page 245) is shown on
Card 11

Q. Will you state what it purports to be a map of?

A. The map shows the properties consisting of the various transmission lines, showing the mileage, the size of wire, the voltage, existing as of 1937, for the North Dakota Power & Light Co. This is shown in red on the map. It shows the same information in yellow for the properties of Northern Power & Light Co. It shows in green, in general, the transmission lines of the Northwestern Public Service Co. I specify lines that are shown in green and designated as property of the Northwestern Public Service Co., are specifically from Aberdeen to Barnard, Aberdeen to Ipswich, from Highmore to Gettysburg. Information is given as to the voltage, size of copper, etc.

Q. Does that show these details exactly and faithfully as shown in the records and exhibits?

A. They are direct copies from the exhibits.

Mr. Fellows: We offer in evidence Exhibit 15.

The Court: With the understanding that it will be connected up the exhibit will be received.

Mr. Fellows: Plaintiff offers in evidence the deposition of Leon M. Fuquay, taken in this action pursuant to stipulation on file, the deposition consisting of three parts, one part taken the 29th of October, 1947, another part taken the 30th day of October, 1947, and the third part taken on the 17th day of November, 1947. Appearances being made by all parties.

Mr. Fellows: I am going to read first from the deposition of October 29, 1947, pages 3 and 4.

LEON M. FUQUAY testified by deposition that he was the Secretary of the Federal Power Commission (hereinafter called "FPC") and had been such since July 8, 1937. Said witness identified certain papers and documents, certified copies of which were received in evidence as plaintiff's exhibits 16 to 51, both inclusive. Certain of these exhibits are as follows:

Plaintiff's Exhibit 16, consisting of a certified copy of defendant's rate schedule FPC No. 1, which is the same document as Exhibit A-1 to the complaint (R. page 34, supra).

Plaintiff's Exhibit 18, consisting of a certified copy of defendant's rate schedule FPC No. 3, which is the same document as Exhibit B to the complaint (R. page 35, supra).

Plaintiff's Exhibit 19, consisting of a certified copy of defendant's rate schedule FPC No. 4, which is the same document as Exhibit C to the complaint (R. page 43, supra).

Plaintiff's Exhibit 20, consisting of a certified copy of defendant's rate schedule FPC No. 5-A, which is the same document as Exhibit D to the complaint (R. page 61, supra).

Plaintiff's Exhibit 21, consisting of a certified copy of defendant's rate schedule FPC No. 5-B, which is the same document as Exhibit E to the complaint (R. page 68, supra).

Plaintiff's Exhibit 22, consisting of a certified copy of defendant's rate schedule FPC No. 6, and Supplement No. 1 and Supplement No. 2 to defendant's rate schedule FPC No. 6 (also sometimes referred to as defendant's rate schedules FPC No. 6.1 and FPC No. 6.2, respectively). The portions of said exhibit which are defendant's rate schedules FPC No. 6 and 6.1 are together the same document as Exhibit F to the complaint (R. page 87, supra). Exhibit 22 also contains six (6) sheets of supplements to interchange capacity agreement covering the years 1942 through 1946 and the period January 1, 1947 to August 31, 1947. They are as follows:

Supplement No. 2
Effective Date: August 31, 1947
Filing Date: January 21, 1947
to
Rate Schedule FPC No. 6
(Cancels FPC No. 6 and Supp. 1 thereto)

Blank Pages: 250, 252, 254, 256, 258, 262, 264, 268, 270

JAN 21 '47
FEDERAL POWER COMMISSION

NOTICE OF CANCELLATION

Notice is hereby given that effective the 31st day of August 1947, Rate Schedule F.P.C. No. 6, together with Supplement No. 1 and Exhibits "C", "D", "E", and "F", effective date July 1, 1941 and filed with the Federal Power Commission by Northwestern Public Service Company, Huron, South Dakota is to be cancelled pursuant to Notice Of Termination dated February 27, 1946 signed by R. M. Heskett, President of Montana-Dakota Utilities Co., copy of which is hereto attached marked Exhibit "A", and which was served on the undersigned by Registered Mail on February 28, 1946.

NORTHWESTERN PUBLIC SERVICE COMPANY

BY A. B. Sanborn

A. B. Sanborn, President

Dated January 15, 1947
Huron, South Dakota.

JAN 23 1947
RATE FILINGS & CONTRACT
ANALYSIS SECTION

EXHIBIT "B"

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

SUPPLEMENT TO INTERCHANGE CAPACITY AGREEMENT

To be attached to and become a part of said Agreement for billing purposes for the period January 1, 1942 to December 31, 1942.

	Northwestern Public Service Company	Dakota Public Service Company	Total
Company generating capacity (kilowatts)	20,290	13,955	34,245
Company system maximum demand (kilowatts)	15,990	12,850	28,840
Company reserve capacity (kilowatts)	4,300	1,105	5,405
Per cent Company reserve capacity	26.89%	8.60%	18.74%
Required reserve (kilowatts)	2,997	2,408	5,405
Company excess or deficiency in reserve capacity (kilowatts)	+ 1,303	-1,303	
Firm power charge @ $13.20 per kilowatt per year		$17,199.60	

RATING OF GENERATING STATIONS

Northwestern Public Service Company

Station	Rating Kw
Aberdeen	6,250
Webster	760
Redfield	900
Faulkton	110
Huron	1,130
Highmore	140
Mitchell	7,500
Armour	980
Yankton	2,340
Clark	180
Total	20,290

Dakota Public Service Company

Station	Rating Kw
Beulah	6,000
Bismarck	5,250
Dickinson	700
Mott	230
Hebridge	1,000
Ellendale	400
Lemmon	235
Gettysburg	140
Total	13,955

COMPANY SYSTEM MAXIMUM DEMAND (One Hour)

Northwestern Public Service Company	15,990
Dakota Public Service Company	12,850
Total	28,840

The above demand is the generation for one hour between 5:00 P.M. and 6:00 P.M. on December 15, 1941, and constitutes the highest demand established during the year 1941.

The above was determined and agreed to by the undersigned Operating Committee and will become the basis of billing under the Interchange Capacity Agreement for the period January 1, 1942 to December 31, 1942.

Dated January 15, 1942

OPERATING COMMITTEE
Northwestern Public Service Company
By O. C. STOKES

Dakota Public Service Company
By J. W. CHESIRE

Blank Pages: 250, 252, 254, 256, 258, 262, 264, 268, 270

Northwestern Public Service Co.
Exhibit C to
Rate Schedule FPC No. 6

NORTHWESTERN PUBLIC SERVICE C
DAKOTA PUBLIC SERVICE COMP

FEB 1? 19..

SUPPLEMENT TO INTERCHANGE CAPACITY AGREEMENT

To be attached to and become a part of said Agreement for billing purposes for the period January 1, 1943 to December 31, 1943.

	Northwestern Public Service Company	Dakota Public Service Company	Total
Company generating capacity (kilowatts)	20,290	13,955	34,245
Company system maximum demand (kilowatts)	14,240	11,680	25,920
Company reserve capacity (kilowatts)	6,050	2,275	8,325
Per cent Company reserve capacity	42.4%	19.47%	32.11%
Required reserve (kilowatts)	4,574	3,751	8,325
Required reserve for billing purposes 25%		2,920	
Company deficiency in reserve capacity (kilowatts)		645	
Firm power charge @ $13.20 per kilowatt per year		$ 8,514.00	

RATING OF GENERATING STATIONS

Northwestern Public Service Company		Dakota Public Service Company	
Station	Rating Kw	Station	Rating Kw
Aberdeen	6,250	Beulah	6,000
Webster	760	Bismarck	5,250
Redfield	900	Dickinson	700
Faulkton	110	Mott	230
Huron	1,130	Mobridge	1,000
Highmore	140	Ellendale	400
Mitchell	7,500	Lemmon	235
Armour	980	Gettysburg	140
Yankton	2,340		
Clark	180		
Total	20,290	Total	13,955

COMPANY SYSTEM MAXIMUM DEMAND (One Hour)

Northwestern Public Service Company	14,240 K.W.H.
Dakota Public Service Company	11,680 K.W.H.
	25,920 K.W.H.

The above demand is the generation for one hour between 6:00 P.M. and 7:00 P.M. on January 7, 1942, and constitutes the highest demand established during the year 1942.

The above was determined and agreed to by the undersigned Operating Committee and will become the basis of billing under the Interchange Capacity Agreement for the period January 1, 1943 to December 31, 1943.

Dated January 15, 1943

OPERATING COMMITTEE
Northwestern Public Service Company
By

Dakota Public Service Company
By

64C

SUPPLEMENT TO INTERCHANGE CAPACITY AGREEMENT

To be attached to and become a part of said Agreement for billing purposes for the period January 1, 1944 to December 31, 1944.

	Northwestern Public Service Company	Dakota Public Service Company	Total
Company generating capacity (kilowatts)	21,790	13,955	35,745
Company system maximum demand (kilowatts)	14,260	11,770	26,030
Company reserve capacity (kilowatts)	7,530	2,185	9,715
Per cent Company reserve capacity	52.6%	18.56%	37.32%
Required reserve (kilowatts)	5,322	4,393	9,715
Required reserve for billing purposes 25%		2,942	
Company deficiency in reserve capacity (kilowatts)		757	
Firm power charge @ $13.20 per kilowatt per year		$ 9,992.40	

RATING OF GENERATING STATIONS

Northwestern Public Service Company		Dakota Public Service Company	
Station	Rating KW	Station	Rating KW
Aberdeen	7,750	Beulah	6,000
Webster	760	Bismarck	5,250
Redfield	900	Dickinson	700
Faulkton	110	Mott	230
Huron	1,130	Mobridge	1,000
Highmore	140	Ellendale	400
Mitchell	7,500	Lemmon	235
Armour	980	Gettysburg	140
Yankton	2,340		
Clark	180		
Total	21,790	Total	13,955

COMPANY SYSTEM MAXIMUM DEMAND (One Hour)

Northwestern Public Service Company	14,260 K.W.H.
Dakota Public Service Company	11,770 K.W.H.
	26,030 K.W.H.

The above demand is the generation for one hour between 6:00 P.M. and 7:00 P.M. on December 22, 1943, and constitutes the highest demand established during the year 1943.

The above was determined and agreed to by the undersigned Operating Committee and will become the basis of billing under the Interchange Capacity Agreement for the period January 1, 1944 to December 31, 1944.

Dated January 8, 1944

OPERATING COMMITTEE
Northwestern Public Service Co.
By

Dakota Public Service Co.
By

164d

SUPPLEMENT TO INTERCHANGE CAPACITY AGREEMENT

FEDERAL POWER COMMISSION
FEB 3 - 1945
RECEIVED

To be attached to and become a part of said Agreement for billing purposes for the period January 1, 1945 to December 31, 1945.

	Northwestern Public Service Company	Dakota Public Service Company	Total
Company generating capacity (kilowatts)	20,940	13,955	34,895
Company system maximum demand (kilowatts)	16,180	13,230	29,410
Company reserve capacity (kilowatts)	4,760	725	5,485
Per cent Company reserve capacity	29.4%	5.5%	18.65%
Required reserve (kilowatts) @ 18.65%	3,018	2,467	5,485
Company deficiency in reserve capacity (kilowatts)		1,742	
Firm power charge @ $13.20 per kilowatt per year		$22,994.40	

RATING OF GENERATING STATIONS

Northwestern Public Service Company

Station	Rating KW
Aberdeen	6,900
Webster	760
Redfield	900
Faulkton	110
Huron	1,130
Highmore	140
Mitchell	7,500
Armour	980
Yankton	2,340
Clark	180
Total	20,940

Dakota Public Service Company

Station	Rating KW
Beulah	6,000
Bismarck	5,250
Dickinson	700
Mott	230
Mobridge	1,000
Ellendale	400
Lemmon	235
Gettysburg	140
Total	13,955

COMPANY SYSTEM MAXIMUM DEMAND (One Hour)

Northwestern Public Service Company - - - 16,180 K.W.H.
Dakota Public Service Company - - - - - - 13,230 K.W.H.
Total - - - - 29,410 K.W.H.

The above demand is the generation for one hour between 6:00 P.M. and 7:00 P.M. on December 21, 1944, and constitutes the highest demand established during the year 1944.

The above was determined and agreed to by the undersigned Operating Committee and will become the basis of billing under the Interchange Capacity Agreement for the period January 1, 1945 to December 31, 1945.

Dated January 9, 1945.

OPERATING COMMITTEE
Northwestern Public Service Co.

By C. E. [illegible]

Dakota Public Service Co.

By [illegible]

Finance & Statistics

1642

No. P & L Co

Dakota Public Service Company
Rate Schedule FPC No. 1
Effective date - February 7, 1936
Filing date - January 31, 1936
Effective ....., 1936

NPLCo

NORTHERN POWER AND LIGHT COMPANY

GENERAL OFFICE
HURON, SOUTH DAKOTA

FPC No. 1

FEDERAL POWER COMMISSION
JAN 31 1936
RECEIVED

January 28, 1936

Federal Power Commission
Washington, D. C.

Gentlemen:

I beg to acknowledge receipt of your letter of December 21, 1935 in which you enclose your Order #36. The time in which to file the information requested has since been extended to this company until January 31, 1936.

In reply we beg to advise as follows:

5335

1. Northern Power and Light Company purchases surplus electric energy at wholesale in interstate commerce for resale under an oral agreement between this company and North Dakota Power and Light Company, the delivery being made at the North Dakota-South Dakota state line at or near Keldron, South Dakota.

NDPLC FPC No. 1

5352

You are hereby advised that North Dakota Power and Light Company has filed a statement of this agreement to which reference and concurrence is hereby made.

2. Northern Power and Light Company also sells and interchanges surplus energy under an oral agreement with Northwestern Public Service Company. Deliveries under this agreement are made at 3 points in the state of South Dakota, at Barnard, Ipswich and Gettysburg. The price of energy delivered for interchange under this agreement is 5 mills per kilowatt-hour and the agreement is considered by the parties to be terminable at the will of either. Under normal operating conditions the energy delivered under this agreement by Northern Power and Light Company to Northwestern Public Service Company is purchased from North Dakota Power and Light Company and delivered to Northern Power and Light Company at Driscoll, North Dakota and/or at a point on the North Dakota-South Dakota state line near Keldron, and is generated at stations of North Dakota Power and Light Company in the state of North Dakota.

5353

NPLCo FPC No.

164p

NORTHWESTERN PUBLIC SERVICE COMPANY
Exhibit F
to
Rate Schedule FPC No. 6

NORTHWESTERN PUBLIC SERVICE COMP.

MONTANA-DAKOTA UTILITIES COMPANY

SUPPLEMENT TO INTERCHANGE CAPACITY AGREEMENT

FEDERAL POWER COMMISSION
JAN 28 19[illegible]
RECEIVED

To be attached to and become a part of said Agreement for billing purposes for the period January 1, 1946 to December 31, 1946.

		Northwestern Public Service Company	Montana-Dakota Utilities Company	Total
1.	Company generating capacity (kilowatts)	27,540	14,311	41,851
2.	Company system maximum demand (kilowatts)	20,079	14,935	35,014
3.	Company reserve capacity (kilowatts)	7,461	(624)	6,837
4.	Per cent Company reserve capacity	37.1%	(4.17%)	19.5265%
5.	Required reserve (kilowatts) @ 19.5265%	3,921	2,916	6,837
6.	Company deficiency in reserve capacity (kilowatts)		3,540 KW	
7.	Firm power charge @ $13.20 per kilowatt per year		$46,728.00	

RATING OF GENERATING STATIONS:

Northwestern Public Service Company

Station	Rating KW
Aberdeen	13,800
Webster	780
Redfield	900
Faulkton	110
Huron	1,130
Highmore	140
Mitchell	7,500
Armour	980
Yankton	2,340
Clark	180
Total	27,540

Montana-Dakota Utilities Company

Station	Rating KW
Beulah	6,000
Bismarck	5,250
Mandan	270
Dickinson	786
Mott	230
Mobridge	1,000
Kilendale	400
Lemmon	235
Gettysburg	140
Total	14,311

COMPANY SYSTEM MAXIMUM DEMAND (One Hour)

Northwestern Public Service Company	20,079 K.W.H.
Montana-Dakota Utilities Company	14,935 K.W.H.
Total	35,014 K.W.H.

The above demand is the generation for one hour between 5:00 P.M. and 6:00 P.M. on December 19, 1945, and constitutes the highest coincident demand established during the year 1945.

The above was determined and agreed to by the undersigned Operating Committee and will become the basis of billing under the Interchange Capacity Agreement for the period January 1, 1946 to December 31, 1946.

Dated January 15, 1946

OPERATING COMMITTEE
Northwestern Public Service Co.

/s/ By O. C. STOKKE

Montana-Dakota Utilities Co.

/s/ By A. P. McDONALD

The above is approved as the basis of billing from January 1, 1946 until additional capacity is installed or until the transmission line from Glendive to Dickinson requires a revision of this supplement.

ACKNOWLEDGED
JAN 28 1946
Secretary

JAN 30 1946
RATE [illegible] & CONTRACT
ANALYSIS SECTION

NORTHWESTERN PUBLIC SERVICE COMPANY
Exhibit B
to
Rate Schedule FPC No. 6

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NORTHWESTERN PUBLIC SER

MONTANA-DAKOTA UTILITI

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FEDERAL POWER COMMISSION

SUPPLEMENT TO INTERCHANGE CAPACITY AGREEMENT

To be attached to and become a part of said Agreement for billing purposes for the period January 1, 1947 through August 31, 1947.

		Northwestern Public Service Company	Montana-Dakota Utilities Company	Total
1.	Company generating capacity (kilowatts)	28,490	14,755	43,245
2.	Company system maximum demand (kilowatts)	24,560	16,240	40,800
3.	Company reserve capacity (kilowatts)	3,930	(1,485)	2,445
4.	Per cent Company reserve capacity	16.0%	(9.15%)	5.992648
5.	Required reserve (kilowatts) @ 5.992648	1,472	973	2,445
6.	Company deficiency in reserve capacity (kilowatts)		2,458 KW	
7.	Reserve Capacity Charge at the rate of $13.20 per annum for the period January 1, 1947 through August 31, 1947		$21,630.40	

RATING OF GENERATING STATIONS:

Northwestern Public Service Company

Station	Rating KW
Aberdeen	13,500
Webster	760
Redfield	900
Faulkton	110
Huron	1,330
Highmore	140
Mitchell	8,250
Armour	980
Yankton	2,340
Clark	180
Total	28,490

Montana-Dakota Utilities Company

Station	Rating KW
Beulah	6,000
Bismarck	5,250
Mandan	400
Dickinson	1,100
Mott	230
Hebridge	1,000
Ellendale	400
Lemmon	235
Gettysburg	140
Total	14,755

COMPANY SYSTEM MAXIMUM DEMAND (One Hour)

Northwestern Public Service Company	24,560 K.W.H.
Montana-Dakota Utilities Company	16,240 K.W.H.
Total	40,800 K.W.H.

The above demand is the generation for one hour between 5:00 P.M. and 6:00 P.M. on December 16, 1946, and constitutes the highest coincident demand established during the year 1946.

The above was determined and agreed to by the undersigned Operating Committee and will become the basis of billing under the Interchange Capacity Agreement for the period January 1, 1947 through August 31, 1947, the date of termination.

Dated February 18, 1947

OPERATING COMMITTEE
Northwestern Public Service Company

By _____

The above figures was determined by the undersigned Operating Committee subject to the objection by the representative of Montana-Dakota Utilities Co. that there should be no firm power charge, the Montana-Dakota Utilities Co. representative also signing this agreement under protest in as much as the entire Northwestern Public Service Company is involved before the Federal Power Commission for investigation. Montana-Dakota Utilities Co. also reserves the right at any time hereafter to demand a recomputation of its generating capacity, system demand, reserve capacity and all other foregoing figures and computations that may at any time during the year 1947 be affected in any way if additional generating capacity is installed by it or additional power purchased from the United States Government or any department or subdivision thereof becomes available to Montana-Dakota Utilities Co. so that the power available to property heretofore owned by Dakota Public Service Company is increased above any of the foregoing figures.

Dated February 18, 1947.

Montana-Dakota Utilities Co.

By Reed W Smith

The remaining portion of plaintiff's exhibit 22, which is defendant's rate schedule FPC No. 6.2, is as follows:

MONTANA - DAKOTA UTILITIES CO.

MINNEAPOLIS 2

February 27, 1946

Northwestern Public Service Company
Huron
South Dakota

Gentlemen:

In accordance with the Agreement between Northwestern Public Service Company and Dakota Public Service Company, dated as of July 1, 1941, and a Supplemental Agreement dated March 13, 1943 between these two companies, as provided in Article II, Section 1, as amended, notice is hereby given by Montana-Dakota Utilities Co., as successor to Dakota Public Service Company, of the termination of that Agreement, such termination shall be effective as of August 31, 1947.

Very truly yours,

MONTANA-DAKOTA UTILITIES CO.,

By (Signed) R. M. Heskett
R. M. HESKETT, PRESIDENT

RMH MM

RATE FILINGS & CONTRACT
ANALYSIS SECTION

EXHIBIT "A"

Plaintiff's Exhibit 23, consisting of a certified copy of Order No. 36 of FPC as amended and readopted February 4, 1936, portions of which are as follows:

The Commission having under consideration the matter of amending its rule (Order No. 36), adopted December 16, 1935, governing the filing of schedules under Section 205, Part II, Federal Power Act, showing all rates and charges made, demanded, or received for the transmission or sale of electric energy subject to the jurisdiction of the Commission and of monthly reports in connection therewith:

It is ordered:

That said rule be and it is hereby amended and readopted to be effective this date until the further order of the Commission to read as follows:

(a) (Filing) On or before January 15, 1936, each public utility shall file with the Commission schedules showing all rates and charges made, demanded, or received for or in connection with the transmission, sale, purchase, or interchange of electric energy subject to the jurisdiction of the Commission, and all contracts, rules and regulations, interchange agreements, and working agreements for the use of facilities, affecting or pertaining to such rates and charges which were effective on January 1, 1936, and such rates and charges shall not be changed except in accordance with the provisions of Section 205, Part II, Federal Power Act.

(b) (Oral Agreements) If any interchange agreement, working agreement for the use of facilities, or other understanding under which electric energy is sold, or interchanged or under which facilities are used for the transmission of electric energy is not in writing, the basic terms of such agreement or understanding upon which settlement is made shall be reduced to writing, approved by the parties thereto, and filed with the Commission, as prescribed in paragraph (a).

(Plaintiff's Exhibits 24, 25, 26, 27, 32, 33, 34, 36, 37, 49 and 50 consist of certified copies of certain FPC files con-

taining correspondence and data pertaining to the filing by defendant with FPC of the oral five mill energy interchange rate, the 1936 Interconnection Contract (Exhibit B to the complaint), the 1938 Interchange Capacity Agreement (Exhibit C to the complaint), the 1939 Interconnection Contract (Exhibit D to the complaint), the 1939 Interchange Capacity Agreement (Exhibit E to the complaint), and the 1941 Agreement (Exhibit F to the complaint). For simplicity of presentation and to avoid duplication in the printing of the record, the essential portions of those exhibits are set out herein in chronological sequence under the particular subject matters to which they refer, as follows:)

Filing of the oral five mill energy interchange rate.

Letter dated January 28, 1936 from Northern Power & Light Company to FPC (Plaintiff's Exhibit 36).

The above statement is made for your information without concession or agreement that the sales and interchange of energy under this agreement constitute interstate transactions.

So far as we are advised, the foregoing constitute the only wholesale sales of electric energy which might be viewed as interstate sales.

This information is filed without prejudice or waiver of any legal or constitutional rights of the company with respect to the Public Utility Act of 1935 or any provision thereof.

Yours very truly,

VICE-PRESIDENT

f.

Letter dated January 28, 1936 from North Dakota Power & Light Company to FPC (Plaintiff's Exhibit 37).

Acknowledgment is made of your letter of December 21, 1935 enclosing a copy of your Order #36. Reference is also made to extension of time to January 31, 1936 in which to file the information requested.

In reply we beg to advise

1. The North Dakota Power and Light Company sells surplus electric energy at wholesale in interstate commerce for resale to Northern Power and Light Company under an oral agreement which has been in effect for some years. Energy under this oral agreement is delivered at the North Dakota-South Dakota state line at a point near Keldron, South Dakota. This energy is transmitted and received over a transmission line of 38 kv. North Dakota Power and Light Company owns the line from its station in Beulah, North Dakota, to the point of delivery at the state line above mentioned, and Northern Power and Light Company owns the interconnecting transmission line in South Dakota from said point of delivery. The charge for the energy delivered by either company to the other under this arrangement is 3½ mills per kilowatt-hour. Under this agreement, energy may be interchanged but under normal operation, the bulk of the deliveries are from North Dakota Power and Light Company to Northern Power and Light Company. The understanding of the parties is that this oral arrangement may be discontinued at the will of either party.

We are filing the above information at this time as the above arrangement has not yet been reduced to writing and signed by the parties but conferences toward the accomplishment of that purpose are being held.

2. North Dakota Power and Light Company also has a similar oral agreement with Northern Power and Light Company under which surplus energy is sold and/or interchanged, at a flat price of 3½ mills per

kilowatt-hour. Deliveries under this agreement are made at Driscoll, in North Dakota. Under normal conditions energy is sold by North Dakota Power and Light Company to Northern Power and Light Company under this agreement. This contract is not regarded by the undersigned as an interstate transaction and the above statement is here stated for your information as Northern Power and Light Company does doubtless sell a portion of the energy delivered to it under this agreement to Northwestern Public Service Company making delivery at points in South Dakota.

Except as above stated, it is not believed that this company owns or operates facilities for the transmission or sale of electric energy at wholesale in interstate commerce for resale.

This information is filed without prejudice or waiver of any legal or constitutional rights of the company with respect to the Public Utility Act of 1935 or any provision thereof.

Letter dated February 1, 1936 from FPC to defendant (included in Plaintiff's Exhibit 26).

Receipt is acknowledged of your letter of January 28, filed in pursuance of Order No. 36, modified by the extension of time for filing information granted by the Commission.

Your attention is called to the provisions of Order No. 36 which require that information of this character shall be filed in triplicate. If you have two carbon copies of your letter available, please forward them.

If the Commission should require additional information in this connection, or in addition to that contemplated by the further requirement of Order No. 36 with respect to filing monthly reports, beginning February 15, 1936, you will be advised.

Letter dated March 10, 1936 from FPC to defendant (included in Plaintiff's Exhibit 26)

Receipt is acknowledged of your letter enclosing reports for the month of January, 1936, filed under the provisions of the Commission's Order No. 36, readopted February 4, 1936, for the following companies:

Northwestern Public Service Company

Northern Power and Light Company

Filing of the 1936 Interconnection Contract and the 1938 Interchange Capacity Agreement.

Letter dated August 15, 1938 from defendant to FPC (included in Plaintiff's Exhibits 26 and 34).

We are in receipt of instructions together with copies of Form FPC 88, on which is intended to report the transmission and sale of electrical energy interstate with other companies. It is our opinion that we do not have interstate commerce with other companies and that this form does not apply to Northwestern Public Service Co.

Letter dated December 20, 1938 from defendant to FPC (included in Plaintiff's Exhibits 26 and 34).

We have recently reduced to writing the oral agreement between Northwestern Public Service Company, North Dakota Power and Light Company and Northern Power and Light Company with respect to reserve capacity. We are attaching herewith four copies of this agreement.

Article IX of this interchange capacity agreement refers to a separate agreement with respect to the interchange of energy. We wrote you on January 28th, 1936, with respect to the energy interchange, but since writing you have reduced to writing the energy interchange agreement between Northwestern Public Service Company and Northern

ower and Light Company. We find, however, that we in-
lvertently failed to send you a copy of this latter contract.
e therefore now send you four copies of this latter agree-
ent.

The foregoing is furnished for the information of the
ederal Power Commission without prejudice to any ques-
on relating to its jurisdiction in the premises, the Com-
ny reserving all its legal rights with respect to such
risdiction.

Letter dated January 9, 1939 from FPC to defendant (included in Plaintiff's Exhibits 24 and 26).

This will acknowledge receipt of your letter of Decem-
r 20, 1938, inclosing four copies of contract dated Octo-
r 7, 1936, between your company and the Northern Power
d Light Company.

This contract has been numbered as follows:

Northwestern Public Service Company
Rate Schedule FPC No. 3
Filing date December 23, 1938

You also inclosed four copies of agreement dated Jan-
ry 1, 1938, between your company, the North Dakota
ower and Light Company, and the Northern Power and
ght Company, which we understand is an oral under-
anding reduced to writing between your company and
e two companies as above mentioned.

This agreement has been numbered as follows:

Northwestern Public Service Company
Rate Schedule FPC No. 4
Also Supplement No. 1
to
Rate Schedule FPC No. 3
Filing date December 23, 1938

It is noted that the effective date of the first above mentioned agreement designated as FPC No. 3 is given in the agreement as January 1, 1936, and the effective date in the agreement designated as FPC No. 4 is given as January 1, 1938. Both of these dates are some months prior to the date of filing the agreements referred to.

Accordingly, your attention is called to Article E of Section 35.3 of Order No. 50 of the Commission which provides "for good cause shown * * * the Commission may by order provide that a contract may become effective as of a date prior to the date of filing". You are therefore requested to make formal application to the Commission in keeping with the requirements of Article E just mentioned, so that the effective dates as above given may be approved by the Commission.

Letter dated January 23, 1939 from defendant to FPC (included in Plaintiff's Exhibits 25, 26 and 34).

As requested in your letter of January 9th, I am enclosing herewith the following:

> Application for authority to make effective these [these] rate schedules as of a date prior to filing such schedules.

We trust that your Commission will give approval to the effective dates of these schedules as contained in our application.

Application for authority to make Rate Schedules Effective Retroactively, included in the aforesaid letter of January 23, 1939 (included in Plaintiff's Exhibits 25, 26 and 34).

Before the
Federal Power Commission
Washington, D. C.

Federal Power Commission
Received
Jan 25 1939

Application for Authority to Make Effective Certain Rate Schedules as of a Date Prior to the Date of Filing Said Schedules.

Pursuant to the provisions of Section 35.3, Article E, of Federal Power Commission order number 50, the undersigned, Northwestern Public Service Company hereby applies to the Federal Power Commission for authority to make the following rate schedules effective as of a date prior to the date of filing said schedules:

Northwestern Public Service Company
Rate Schedule FPC No. 3
Filing date December 23, 1938
Effective date of contract January 1, 1936

Northwestern Public Service Company
Rate schedule FPC No. 4
Filing date December 23, 1938
Effective date January 1, 1938

Under date of January 28, 1936 we notified your Commission of an oral agreement between Northwestern Public Service Company and Northern Power and Light Company, providing for the interchange of surplus energy. This oral agreement was in effect for a number of years before it was reduced to writing. On October 7, 1936 this oral agreement was reduced to writing without changing the terms and we inadvertently failed to file a copy of the written agreement with your Commission. This agreement is identified as Rate Schedule FPC No. 3.

Northwestern Public Service Company, North Dakota Power and Light Company and Northern Power and Light Company operated their respective systems as a single interconnected system for a number of years under an oral agreement providing for the billing of energy interchanged and also for the billing of fixed charges on interconnection facilities, which were provided by Northwestern Public Service Company. Under this oral agreement no provision was made for each company to provide its proportion of the "reserve capacity" needed for the interconnected system.

Under date of January 1, 1938 an agreement was entered into whereby each company would furnish its proportion of the "reserve capacity" required for the interconnected system, or in lieu thereof the company or companies with a deficiency of reserve capacity will pay the company or companies having excess reserve capacity a demand charge. We inadvertently failed to file a copy of this agreement with your Commission. This agreement is identified as Rate Schedule FPC No. 4.

The undersigned applicant respectfully requests authority to make the agreement identified as FPC No. 3 effective as of January 1, 1936 and to make the agreement identified as FPC No. 4 effective as of January 1, 1938.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By C. L. SANDSTEDT,
Vice President & Treasurer.

Letter dated February 14, 1939 from FPC to defendant (included in Plaintiff's Exhibits 24 and 26).

Reference is made to your filing on December 23, 1938, of a rate schedule agreement with the Northern Power & Light Company dated October 7, 1936.

An examination of the provisions contained in this agreement discloses that your company will receive for trans-

mission service rendered, a revenue in the amount of $20,000 annually.

In order that we may be fully advised with respect to the rendition of this service, you are requested to submit a statement and pertinent data, in support of this charge.

It is desired that the above request be submitted within ten days after receipt of this letter.

Letter dated February 22, 1939 from defendant to FPC (included in Plaintiff's Exhibits 25, 26 and 34).

This will acknowledge receipt of your letter of February 14th with reference to contract dated October 7, 1936, between Northwestern Public Service Company and Northern Power and Light Company, identified as Rate Schedule F. P. C. No. 3.

You ask that we submit a statement and pertinent data to support the charge of $20,000 made under this contract. This charge is to cover interest, depreciation and operating costs of the interconnection facilities that were entirely provided by Northwestern Public Service Company. These facilities are specifically listed on page 1 of the contract.

The systems of Northwestern Public Service Company, Northern Power and Light Company and North Dakota Power & Light Company are operated as a single interconnected system and this method of operation provides a substantial savings in production costs as well as in power pool investment for each of the participants. At the time the physical interconnection was made Northern Power and Light Company did not have sufficient cash to finance its portion of the cost and all of the capital was provided by Northwestern Public Service Company. The charge to Northern Power and Light Company is on the basis of actual costs.

Your letter is not very specific as to what information you desire and in the event the contract together with this letter does not give sufficient information we should be

glad to furnish you with whatever information you desire if you will outline just what you require in this connection.

The foregoing is furnished for the information of the Federal Power Commission without prejudice to any question relating to its jurisdiction in the premises, the Company reserving all its legal rights with respect to such jurisdiction.

Letter dated March 9, 1939 from FPC to defendant (included in Plaintiff's Exhibit 24) was the inquiry prompting defendant's letter of March 15, 1939, infra.

This will acknowledge your letter of February 22, 1939 in reply to our letter of February 14, 1939 with respect to data relating to certain transmission charges provided for in your rate schedule agreement with Northern Power and Light Company designated as FPC No. 3.

Specifically, the information is:

1. The number of miles of transmission lines.

2. The voltage of these lines.

3. The cost of these lines.

4. The cost of the substations and appurtenances.

5. Rate of interest assumed on capital invested.

6. Estimated life of transmission lines, substations and appurtenances, separately.

7. Depreciation rate applied to lines, substations and appurtenances.

8. Tax rate applied, showing derivation.

9. Insurance rate applied.

10. Annual maintenance and operating costs assumed.

11. Basis for assumption regarding maintenance and operating costs.

12. Description of any other items of expense that you have included in the derivation of your annual $20,000 charge.

It is desired that this information be submitted within ten days following receipt of this letter.

Letter dated March 15, 1939 from defendant to FPC (included in Plaintiff's Exhibits 25 and 34).

Following is the information requested in your letter of March 9th in connection with the transmission charges provided in the agreement with Northern Power and Light Company, designated as FPC No. 3:

1. The number of miles of transmission lines—123 miles.
2. The voltage of these lines—50 miles 22000 Volt
   73 " 33000 Volt
3. The cost of these lines—

Line from Aberdeen to Barnard and from Aberdeen to Ipswich—50 miles.	$105,247.00
Line from Ree Heights to Gettysburg 73 miles	141,001.20
Substation and Appurtenances at Aberdeen, S. D.	54,521.32
Substation and Appurtenances at Gettysburg, S. D.	24,220.26
Total Cost	$324,989.78

5. Rate of interest assumed on capital invested—6%.
6. Estimated life of transmission lines, substation and appurtenances—25 years.
7. Depreciation rate—4%.
8. Actual ad valorem taxes for the year 1937—$4,114.45
9. Actual insurance—(Aberdeen substation only) $27.50
10. Assumed maintenance and operating cost—$5,372.64

11. Basis for assuming maintenance and operating costs—

Transmission maintenance and operating costs for Northwestern Public Service Company on the entire Northwestern system averaged $43.68 per mile. The assumed cost for operating and maintaining these lines is assumed to be $43.68 or a total of $5,372.64.

12. Total annual charges—

Interest 6% of $324,989.78	$19,499.39
Depreciation 4% of $324,989.78	12,999.59
Insurance	27.50
Taxes	4,114.45
Maintenance and operating costs	5,372.64
Total fixed charges & operating costs	$42,013.57

At the time this contract was made it was assumed that the operating costs and fixed charges would amount to approximately $40,000.00 per year, Northern Power and Light Company to pay one-half and Northwestern Public Service Company, one-half. It will be noticed that total costs itemized above amount to somewhat more than $40,000.00 but this is to be expected as the contract does not provide that billing be on an actual basis.

The foregoing is furnished for the information of the Federal Power Commission without prejudice to any question relating to its jurisdiction in the premises, the Company reserving all its legal rights with respect to such jurisdiction.

Letter dated March 21, 1939 from FPC to defendant (included in Plaintiff's Exhibit 24).

Acknowledgment is made of your letter of March 15, 1939 transmitting information requested in our letter of March 9, 1939 relating to transmission charges set forth in your agreement with the Northern Power and Light Company, designated as FPC No. 3.

The information you have furnished appears to be complete and your prompt reply with respect to these items is appreciated.

Minutes and orders of the FPC relating to the 1936 and 1938 contracts (included in Plaintiff's Exhibit 49) are as follows:

6695

Minutes of the Eight Hundred Fifty-sixth Meeting

Pursuant to call by the Acting Chairman, the Commission convened at 10:00 a. m. on February 23, 1939.

Present: Acting Chairman Seavey, Commissioners Draper, Manley and Scott.

• • • • •

Action was taken, as set forth in the documents appended hereto, in the following matters:

• • • • •

—2—

6696

• • • • •

(13) Northwestern Public Service Company.

(Order allowing rate schedule to take effect prior to date of filing).

• • • • •

(18) Northwestern Public Service Company.

(Order allowing rate schedule to take effect prior to date of filing).

• • • • •

—3—

6697

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Thereupon, the Commission adjourned.

CLYDE L. SEAVEY,
Acting Chairman.

(Seal)

Attest:

LEON M. FUQUAY,
Secretary.

United States of America 6721
Federal Power Commission

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

February 23, 1939.

In the Matter of Northwestern Public Service Company }

Order Allowing Rate Schedule to Take Effect Prior to Date of Filing.

It appearing to the Commission that:

(a) On December 23, 1938, the Northwestern Public Service Company filed with the Federal Power Commission its agreement, dated October 7, 1936, with the Northern Power and Light Company, designated in the files of the Commission as Northwestern Public Service Company Rate Schedule F. P. C. No. 3, providing for the interchange of surplus electric energy and emergency service and the rendition of transmission service by the Northwestern Public Service Company for the Northern Power and Light Company;

(b) Northwestern Public Service Company has requested that the said agreement be accepted by the Commission for filing, effective as of January 1, 1936;

(c) Good cause has been shown for, and the public interest will be served by, allowing Northwestern Public Service Company Rate Schedule F. P. C. No. 3 to take effect as of January 1, 1936;

The Commission orders that:

The agreement of October 7, 1936, between the Northwestern Public Service Company and Northern Power and Light Company, as filed with the Commission on December 23, 1938, and designated as Northwestern Public Service Company Rate Schedule F. P. C. No. 3, be and the same is hereby allowed to take effect as of January 1, 1936.

By the Commission.

LEON M. FUQUAY,
Secretary.

(Seal)

United States of America 6729
Federal Power Commission

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

February 23, 1939.

In the Matter of Northwestern Public Service Company }

Order Allowing Rate Schedule to Take Effect Prior to Date of Filing.

It appearing to the Commission that:

(a) On December 23, 1938, the Northwestern Public Service Company filed with the Federal Power Commission its agreement, dated January 1, 1938, with the Northern Power and Light Company and the North Dakota Power and Light Company, designated in the files of the Commission as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, providing for the pooling of the generating facilities of these companies to make available to each of the said companies the spare or reserve power of the other companies, and also providing for the interchange of surplus electric energy and the furnishing of emergency service when needed;

(b) Northwestern Public Service Company has requested that the said agreement be accepted by the Commission for filing, effective as of January 1, 1938;

(c) Good cause has been shown for, and the public interest will be served by, allowing Northwestern Public Service Company Rate Schedule F. P. C. No. 4 to take effect as of January 1, 1938;

The Commission orders that:

The agreement of January 1, 1938, between the Northwestern Public Service Company, the Northern Power and Light Company, and the North Dakota Power and Light Company, as filed with the Commis-

sion on December 23, 1938, and designated as Northwestern Public Service Company Rate Schedule F. P. C. No. 4, be and the same is hereby allowed to take effect as of January 1, 1938.

By the Commission.

LEON M. FUQUAY,
Secretary.

(Seal)

1939 Interconnection Contract and the 1939 Interchange Capacity Agreement.

Letter dated January 5, 1940 from Martens & Goldsmith to FPC (included in Plaintiff's Exhibits 27 and 34).

We are the attorneys for the Northwestern Public Service Co., at Huron, South Dakota, and are herewith enclosing the following:

Interconnection Contract dated July 1, 1939, which supersedes Interconnection Contract dated October 7, 1936 (Northwestern Public Service Company rate schedule FPC 3) with request for a prior effective date;

Interchange Capacity Agreement dated July 1, 1939, which supersedes Interchange Capacity Agreement dated January 1, 1939 (Northwestern Public Service Company rate schedule FPC 4), with request for a prior effective date.

As we have heretofore advised you, by an Agreement of Merger dated January 28, 1939, effective July 1, 1939, Northern Power and Light Company became merged into North Dakota Power & Light Company as the surviving corporation, under the corporate title "Dakota Public Service Company". The enclosed Interconnection Contract and Interchange Capacity Agreement make no changes so far as rates are concerned in the former rate schedules filed by Northwestern Public Service Company, designated Northwestern Public Service Company rate schedules FPC 3 and 4.

For the purpose of carrying the Merger into effect we would respectfully request that the enclosed schedules be filed so that they would become effective as of July 1, 1939. An original and five conformed copies of each of the schedules hereinbefore referred to are enclosed herewith.

Will you please acknowledge receipt and advise us of the rate schedule numbers given these agreements, and we will then prepare and forward for filing a Notice of Cancellation by Northwestern Public Service Company of its rate schedules FPC 3 and 4, and a certificate of Concurrence by Dakota Public Service Company in the two enclosed rate schedules.

Document entitled "Reasons for Making Rate Schedule Effective on a Prior Date" enclosed with the aforesaid letter of January 5, 1940 relating to the 1939 Interconnection Contract (included in Plaintiff's Exhibits 27 and 34).

Reasons for Making Rate Schedule Effective on a Prior Date.

Federal Power Commission,
Washington, D. C.

Federal Power Commission
Received
Jan 10 1940

Northwestern Public Service Company, in accordance with Section 35.3E of your rules and regulations, hereby requests that an order be entered providing that the herein referred to Interconnection Contract be filed so that such rate will be effective as of July 1, 1939, and as grounds for such order, represents and shows:

That by reason of the Agreement of Merger, dated January 28, 1939, and effective July 1, 1939, Northern Power and Light Company became merged into North Dakota Power & Light Company as the surviving corporation, under the corporate title "Dakota Public Service Company"; That by the terms of such Agreement of Merger, which was approved by the Board of Railroad Commis-

sioners of North Dakota and the Securities and Exchange Commission, North Dakota Power & Light Company absorbed Northern Power and Light Company and continued in existence as the same corporation with its corporate title changed to Dakota Public Service Company, and no new corporation was formed.

That the Interconnection Contract dated July 1, 1939, makes no change in the Interconnection Contract dated October 7, 1936, heretofore filed as Northwestern Public Service Company rate schedule F. P. C. number 3, and is made solely for the purpose of confirming the Agreement of Merger hereinbefore referred to.

Entirely through oversight of counsel, the officers of Northwestern Public Service Company were not advised to file the herein referred to Interconnection Contract.

Dated January 5, 1940.

Respectfully submitted,

NORTHWESTERN PUBLIC SERVICE COMPANY,
By KARL GOLDSMITH,
Its Attorney, Pierre, S. Dak.

Document entitled "Reasons for Making Rate Schedule Effective on a Prior Date" enclosed with the aforesaid letter of January 5, 1940 relating to the 1939 Interchange Capacity Agreement (included in Plaintiff's Exhibits 27 and 34).

This document is identical with the foregoing document except for the name of the Agreement therein referred to, the date thereof and the rate schedule number.

Letter dated January 18, 1940 from FPC to Martens & Goldsmith (included in Plaintiff's Exhibit 27).

This will acknowledge receipt of your letter of January 5, 1940, inclosing six copies each of the following:

Agreement dated July 1, 1939, between the Northwestern Public Service Company and the Dakota Public Service Company, whereby surplus and emergency energy are interchanged.

Agreement dated July 1, 1939, between the same companies, whereby reserve or spare generating capacity is interchanged.

Applications, pursuant to Sec. 35.3E of the Commission's Rules of Practice and Regulations, that July 1, 1939, be established as the effective date of each agreement.

The agreement dated July 1, 1939, whereby surplus and emergency energy are interchanged has been numbered:

Northwestern Public Service Company
Rate Schedule FPC No. 5-A
Effective date:
Filing date: January 10, 1940
(Cancels Rate Schedule FPC No. 3)

The agreement dated July 1, 1939, whereby reserve or spare generating capacity is interchanged has been numbered:

Northwestern Public Service Company
Rate Schedule FPC No. 5-B
Effective date:
Filing date: January 10, 1940
(Cancels Rate Schedule FPC No. 4)

The applications that July 1, 1939, be established as the effective date of each agreement will be referred to the Commission, and you will be notified as promptly as possible of the action taken.

It is noted that the plat, designated by the company as Exhibit A and referred to in Rate Schedule FPC No. 5-B,

has been omitted. Please file six copies of the plat designated as Exhibit A.

Since no service has been discontinued, it will not be necessary that you file, on behalf of the Northwestern Public Service Company, Notices of Cancellation for Rate Schedules FPC Nos. 3 and 4.

A copy of this letter is inclosed for transmission to the company.

The 1941 Agreement.

Letter dated February 2, 1942 from defendant to FPC (included in Plaintiff's Exhibits 32 and 34)

Enclosed herewith are six conformed copies of an interchange power agreement between Northwestern Public Service Company and Dakota Public Service Company.

This agreement was executed on January 28, 1942, to be effective as of July 1, 1941, and cancels and supersedes the Interchange Capacity Agreement dated July 1, 1939, identified as F. P. C. No. 5-B and the Interchange Energy Agreement dated July 1, 1939, identified as F. P. C. 5-A.

The enclosed agreement represents a simplified combination of the two agreements referred to above without material change in the formula for determining the charges. The new agreement has an added equitable provision which might become effective in the future if either party should desire to make comparatively heavy additions to its generating capacity.

While the monthly transmission line charge that Dakota Public Service Company pays to Northwestern Public Service Company has not been changed as to the amount of the monthly payment, the new agreement provides that a portion of the charge will be applied against the amortization of the existing investment and after the investment has been amortized the charge will be reduced to cover maintenance and depreciation on the interchange facilities.

We also wish to point out that while the new contract is effective July 1, 1941, the payments made prior to December 31, 1941 are exactly the same as would have been made under the two predecessor contracts, and that even if the new contract was not effective for 1942, nevertheless Exhibit "B" regulating payments during 1942 under the new contract would still be effective as an amendment to the old interchange capacity contract.

The enclosed copies of this contract are submitted for your approval jointly by the parties thereto.

Letter dated February 19, 1942 from FPC to defendant (included in Plaintiff's Exhibit 32).

This will acknowledge receipt of your letter of February 2, 1942 transmitting six copies of (1) an agreement dated July 1, 1941, between your company and the Dakota Public Service Company and (2) Exhibits A and B to the agreement.

This agreement has been tentatively designated:

Northwestern Public Service Company
Rate Schedule FPC No. 6

Your statement regarding the effective date of the rate schedule is noted. It appears that the appropriate effective date for the rate schedule is July 1, 1941. In connection therewith your attention is directed to Paragraph B of Section 35.3 of the Rules of Practice and Regulations under the Federal Power Act relative to filing of a request for an effective date prior to the date of filing of a proposed rate schedule. The request may be made in a letter.

It is noted that under the proposed agreement the demands will be measured over a 60-minute interval, and that such interval was used to determine the excess or deficiency in reserve capacity for the calendar year 1942. Please state the values of the the excess or deficiency in reserve capacity which would have resulted had a 30-minute demand inter-

val been used, as provided in the present agreement, instead of a 60-minute interval.

Please give the following information regarding your interconnection facilities with the Dakota Public Service Company, described on page one of the proposed agreement:

1. The year the facilities were constructed.

2. The original cost of the facilities.

3. The service lives and the depreciation rates used for the facilities.

Also please state the items, and the value of each item, which make up the transmission line charge of $1,666.66 per month for the period from January 1, 1936 through June 1950. Will this provision necessitate any retroactive payments by the Dakota Public Service Company? If the answer is yes, what period will such payment cover?

In paragraph 4 of your letter of February 2, 1942 you state that ". . . the new agreement provides that a portion of the charge will be applied against the amortization of the existing investment and after the investment has been amortized the charges will be reduced to cover maintenance and depreciation on the interchange facilities." Please state why you propose to collect depreciation charges after the investment in the facilities has been amortized.

It will be appreciated if your response on FPC Form No. 88, "Semi-Annual Statement of Interstate Transmission, Sale and Interchange of Electric Energy", for the period ended December 31, 1941 is forwarded to the Commission not later than your reply to this letter.

A filing date will be assigned to the proposed agreement upon receipt of the retroactive effective date application and the requested information.

An early response is requested.

Letter dated February 24, 1942 from defendant to FPC (included in Plaintiff's Exhibits 32 and 34).

In compliance with your request of February 19th, we are enclosing herewith a request in letter form for an effective date prior to the date of filing for the above rate schedule.

Following is the additional information requested:

1. We are not equipped to determine the 30-minute instantaneous maximum demand for the interconnected systems of Northwestern Public Service Company and Dakota Public Service Company and this is one of the considerations that prompted changing to a 60-minute period for the purpose of this rate schedule. In attempting to determine a 30-minute demand it was necessary to locate employees at each point of generation and interchange to take readings. It was not practical to have employees engaged on this work during the entire month that the maximum demand was likely to occur and we therefore tried to anticipate the day and the hours from previous experience. On the above basis we determined the 30-minute demand on December 22, 1941. On this basis the excess or deficiency in reserve capacity is as follows:

	Northwestern Public Service Company	Dakota Public Service Company	Total Interconnected System
Company Generating Capacities...	29,290 kw	13,955 kw	34,245 kw
Company System Maximum 30 Min. Demands	17,217 kw	12,903 kw	30,120 kw
Reserve Capacities	3,073 kw	1,052 kw	4,125 kw
Per Cent Reserve Capacity.....	17.84%	8.15%	13.695%
Required kw Capacity for 13.695% Reserve	19,575 kw	14,670 kw	34,245 kw
Excess or Deficiency of Reserve Capacity	715 kw	—(715 kw)	....

We wish to point out, however, that the maximum 60-minute demand occurred on December 15, 1941 and at that particular date and time we did not attempt to determine the 30-minute maximum demand.

All of our meters are read hourly and posted to plant log sheets and the 60-minute maximum demand can be accu-

rately determined from these records. It is impossible, however, at this time to ascertain what the 30-minute maximum demand might have been on December 15, 1941, which is the date that the 60-minute maximum demand occurred.

2. The connection facilities were placed in service in October, 1930.

3. Following is the original cost of these facilities:

62 miles 33 kv line from Highmore to Gettysburg, South Dakota	$109,856.76
28.5 miles 38 kv line Aberdeen to Ipswich, South Dakota	60,038.68
20 miles 38 kv line Aberdeen to Barnard, South Dakota	47,824.90
Substation facilities—Aberdeen, S. D.	60,479.48
Substation facilities—Gettysburg, S. D.	25,249.44
Total	$303,449.26

4. The above facilities were constructed by Northwestern Public Service Company and placed in operation in October, 1930 but no contract was entered into and no charge was made to Northern Power and Light Company until January 1, 1936, at which time the contract was entered into providing for a charge of $20,000 a year to Northern Power and Light Company. While this charge was intended to cover interest and depreciation, maintenance, taxes and operation of the interconnection facilities, the amount for each of these items was not specified.

On July 1, 1939 Northern Power and Light Company was merged into North Dakota Power & Light Company and the name of the surviving corporation was changed to Dakota Public Service Company, and at that time a new contract was entered into between Dakota Public Service Company and Northwestern Public Service Company. There were no important changes made in this contract.

In 1940 and 1941 plans were made calling for substantial additions to the systems generating capacity and at that

time it was realized by both parties that it was desirable to make some changes in the Interconnection Contract and in the Interchange Capacity Agreement. After a period of negotiation these two agreements were combined into the single agreement dated July 1, 1941. Under this new agreement the transmission line charge of $20,000 a year, or $1,666.66 per month, remains the same, however a part of this charge is applied against the amortization of the principal on the following basis.

Northwestern Public Service Company made the entire investment of $303,449.26, and it is assumed that one-half of this amount, or $151,724.63 is chargeable to Dakota Public Service Company.

Operation, maintenance and taxes are calculated at the rate of 3½% per year and interest is calculated at the rate of 5% per annum on the unpaid balance. The balance of $1,666.66 monthly charge is applied against the amortization of the principal and on this basis the principal is entirely amortized in July, 1950, and after that date the monthly charge will be reduced to $442.53, which covers only the operation and maintenance at the rate of 3½% of Dakota Public Service Company's share of the total investment.

This provision does not necessitate any retroactive payments by Dakota Public Service Company. In fact Dakota Public Service Company has not and will not be required to make any payments for the period that these interchange facilities were in existence prior to January 1, 1936.

In paragraph four of my letter of February 2nd the maintenance and operation charge was erroneously referred to as a maintenance and depreciation charge. This charge is for operation and maintenance and does not include anything for depreciation.

From Dakota Public Service Company's standpoint this contract is much more desirable than the original contract as a termination date is provided for the payment of interest without any increase in the monthly charge.

Document entitled "Reasons for Making Rate Schedule Effective on a Prior Date" enclosed with the aforesaid letter of February 24, 1942 (included in Plaintiff's Exhibits 32 and 34).

Reasons for Making Rate Schedule Effective on a Prior Date.

Federal Power Commission
Washington, D. C.

Northwestern Public Service Company, in accordance with Section 35.3E of your rules and regulations, hereby requests that an order be entered providing that the hereto referred Interchange Power Agreement, dated July 1, 1941 and tentatively designated as Northwestern Public Service Company Rate Schedule FPC No. 6 be filed so such rate will be effective as of July 1, 1941, and as grounds for such order represents and shows:

That the Interchange Power Agreement dated July 1, 1941, heretofore filed with your Commission and tentatively designated as Northwestern Public Service Company Rate Schedule FPC No. 6, is a combination of the Interchange Capacity Agreement between Northwestern Public Service Company and Dakota Public Service Company dated July 1, 1939, identified as FPC No. 5-B and the Interchange Energy Agreement between Northwestern Public Service Company and Dakota Public Service Company dated July 1, 1939, identified as FPC No. 5-A. That the rates provided in the Interchange Energy Agreement and the Interchange Capacity Agreement above designated FPC No. 5-A and FPC No. 5-B, respectively, are the same as those provided in the Interchange Power Agreement above referred to and tentatively designated Northwestern Public Service Company Rate Schedule FPC No. 6. That the Interchange Power Agreement dated July 1, 1941, tentatively designated Northwestern Public Service Company Rate Schedule FPC No. 6 was made for the purpose of combining the terms of the Interchange Energy Agreement and the Interchange Capacity Agreement, designated as FPC No. 5-A and FPC No. 5-B, respectively, into one contract, and to determine the amount of Dakota Public Service Company's

share of the cost of the interconnection facilities and the cost of the maintenance thereof, and to provide for amortized payments thereof.

That the Interchange Power Agreement dated July 1, 1941 was not filed prior to the effective date of the rates therein provided for the reason that, although the essentials and the terms of the agreement were agreed upon by the parties by July 1, 1941, the final form and wording of the agreement was not completed until January 28, 1942.

Wherefore, the undersigned respectfully requests that an order be entered providing that the Interchange Power Agreement dated July 1, 1941, tentatively designated Northwestern Public Service Company Rate Schedule FPC No. 6 be filed, effective as of July 1, 1941.

Respectfully submitted,

NORTHWESTERN PUBLIC SERVICE COMPANY,

C. L. SANDSTEDT,
Vice President and Treasurer.

Dated February 25, 1942.

Letter dated March 19, 1942 from FPC to defendant (included in Plaintiff's Exhibit 32).

This will acknowledge receipt of your letter of February 24, 1942 containing further data relative to a proposed interchange agreement between Northwestern Public Service Company and Dakota Public Service Company tentatively designated Northwestern Public Service Company Rate Schedule FPC No. 6.

Your remarks regarding demands and interconnection facilities are noted.

Your request for an effective date of July 1, 1941 will be referred to the Commission and you will be notified of the action taken.

Letter dated March 18, 1942 from the Secretary of FPC to Dakota Public Service Company.

"Gentlemen: The Northwestern Public Service Company has forwarded to the Commission in a letter dated February 2, 1942, an interchange agreement dated July 1, 1941, with your company.

This agreement has been tentatively designated Northwestern Public Service Company Rate Schedule FPC No. 6.

In accordance with Section 35.3A of the Rule of Practice and Regulations of the Federal Power Commission, please file six copies or a certificate of concurrence in the proposed agreement, or six copies of the agreement.

Your early reply will be appreciated.

Very truly yours,

LEON M. FUQUAY,
Secretary."

Letter dated March 24, 1942 from C. L. Sandstedt, Vice President and Treasurer, Dakota Public Service Company, to FPC which witness Fuquay testified was received by the Commission with the enclosures on March 27, 1942.

"In accordance with your letter of March 18, we are enclosing herewith six copies of a certificate of concurrence in connection with Northwestern Public Service Company's rate schedule FPC No. 6.

Yours very truly,"

Certificate of concurrence by Dakota Public Service Company (Plaintiff's Exhibit 33).

Montana-Dakota Utilities Company
(Formerly: Dakota Pub. Serv. Co., FPC No. 4)
Rate Schedule FPC No. 3
Filing Date: March 24, 1942
Effect. Date: July 1, 1941

Concurrence in
Northwestern Public Service Company,
Rate Schedule FPC No. 6.

Certificate of Concurrence.

This is to certify that Dakota Public Service Company [assets] to and concurs in the rate schedule described below, which Northwestern Public Service Company filed, and hereby files this Certificate of Concurrence in lieu of the filing of the rate schedule specified.

Northwestern Public Service Company Rate Schedule F. P. C. No. 6, being an Interchange Power Agreement dated July 1, 1941, between Dakota Public Service Company and Northwestern Public Service Company.

Dated March 24, 1942.

DAKOTA PUBLIC SERVICE COMPANY,
By C. L. SANDSTEDT,
Vice President.

(Corporate Seal)

Minutes and orders of the FPC relating to the 1941 agreement (included in Plaintiff's Exhibit 50) are as follows:

12532

Minutes of the One Thousand Two Hundred and Ninety-ninth Meeting.

The Commission convened at 10:00 a. m. on March 31, 1942.

Present: Chairman Olds, Commissioners Draper, Manly, Scott and Seavey.

• • • • •

12534

—3—

* * * * *

Action was taken, as set forth in the documents appended hereto, in the following matters:

* * * * *

(8) Northwestern Public Service Company

(Order allowing rate schedule to take effect)

12535

—4—

* * * * *

Thereupon, the Commission adjourned.

LELAND OLDS,
Chairman.

Attest: (Seal)

LEON M. FUQUAY,
Secretary.

12546

United States of America
Federal Power Commission

Commissioners) Leland Olds, Chairman, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

March 31, 1942.

In the Matter of
Northwestern Public Service Company

Order Allowing Rate Schedule to Take Effect.

Upon consideration by the Commission of application filed by Northwestern Public Service Company, requesting that Northwestern Public Service Company Rate Schedule FPC No. 6, providing for the interchange of electric energy with Dakota Public Service Company, be allowed to take effect as of July 1, 1941;

It is ordered that:

(A) The aforesaid rate schedule be and it is hereby allowed to take effect as of July 1, 1941;

(B) The aforesaid rate schedule shall be deemed to have been filed and published in compliance with the Federal Power Act;

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, provision, or condition contained in the contract referred to herein;

(D) This order is without prejudice to any findings or orders which may be made by the Commission in any proceedings now pending, or hereafter instituted, by or against the applicant.

By the Commission.

LEON M. FUQUAY,
Secretary.

Plaintiff's Exhibit 31 is as follows:

SUPPLEMENT TO

CANCELLED

INTERCHANGE CAPACITY AGREEMENT

EXHIBIT "B"

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

Rating of Generating Stations determined as of December 31, 1938:

NORTHWESTERN PUBLIC SERVICE COMPANY		
	Aberdeen Station	6,250 K.W.
	Webster "	760 "
	Redfield "	900 "
	Faulkton "	110 "
	Huron "	1,130 "
	Highmore "	140 "
	Mitchell "	7,500 "
	Armour "	980 "
	Yankton "	1,540 "
		19,310 K.W.
DAKOTA PUBLIC SERVICE COMPANY		
	Duluth Station	6,000 K.W.
	Bismarck "	2,250 "
	Dickinson "	700 "
	Mott "	230 "
	Mobridge "	1,000 "
	Hillendale "	400 "
	Lemmon "	235 "
	Gettysburg "	140 "
		10,955 K.W.
	Total All Companies	30,265 K.W.

These ratings were determined and agreed to by the Committee on Operations and will apply for the contract term beginning July 1, 1939 and ending December 31, 1939.

Signed this July 1, 1939.

NORTHWESTERN PUBLIC SERVICE COMPANY

By _____

DAKOTA PUBLIC SERVICE COMPANY

By _____

SUPPLEMENT TO

INTERCHANGE CAPACITY AGREEMENT — EXHIBIT "C"

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

The Company System Maximum demands as listed below were established on December 20, 1938, by multiplying by two the net total output in kilowatt hours during the half hour from 5:30 P.M. to 6 P.M.

NORTHWESTERN PUBLIC SERVICE COMPANY	15,150 K.W.
DAKOTA PUBLIC SERVICE COMPANY	10,414 K.W.
TOTAL	25,564 K.W.

These Company System Maximum Demands were determined and agreed to by the Committee on Operations and will apply for the contract term beginning July 1, 1939, and ending December 31, 1939.

Signed this 1st Day of July, 1939.

NORTHWESTERN PUBLIC SERVICE COMPANY

By _____

DAKOTA PUBLIC SERVICE COMPANY

By _____

SUPPLEMENT TO

INTERCHANGE CAPACITY AGREEMENT EXHIBIT "D"

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

Summary for determination of firm capacity and demand charges:

	NORTHWESTERN PUBLIC SERVICE COMPANY	DAKOTA PUBLIC SERVICE COMPANY	TOTAL INTER-CONNECTED SYSTEM
Company Generating Capacities	19,310 K.W.	10,955 K.W.	30,265 K.W.
Company System Maximum Demands	15,150 K.W.	10,414 K.W.	25,564 K.W.
Reserve Capacity	4,160 K.W.	541 K.W.	4,701 K.W.
Per Cent Reserve Capacity	27.46 %	5.2%	18.39%
Required K.W. Capacity for 18.39% Reserve	17,936 K.W.	12,329 K.W.	30,265 K.W.
Excess or Deficiency of Reserve Capacity	1,374 K.W.	- 1,374 K.W.	-
Demand Charge @ $13.20 per kilowatt of deficiency of reserve capacity for the contract term beginning Jan. 1, 1939 and ending Dec. 1, 1939, Dakota Public Service Company		$18,136.80	
Demand Charge Apportioned to Supplying Company (N.W.P.S.Co.)	$18,136.80		

These computations were determined and agreed to by the Committee on Operations and will apply for the contract term beginning July 1, 1939 and ending December 31, 1939.

Signed this 1st day of July, 1939.

NORTHWESTERN PUBLIC SERVICE COMPANY

By _____

DAKOTA PUBLIC SERVICE COMPANY

By _____

51

1-V 39

Plaintiff's Exhibit 31.

305

SEE
NOS
RAT

Northwestern Public Service Company
Exhibit B
to
Rate Schedule FPC No. 9-B
(Supersedes Company Exhibits "B", "C" and "D")

EXHIBIT "B"

SUPPLEMENT TO

INTERCHANGE CAPACITY AGREEMENT

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

FEDERAL POWER COMMISSION RECEIVED

Rating of Generating Stations determined as of December 31, 1939:

NORTHWESTERN PUBLIC SERVICE COMPANY

Aberdeen Station		6,250 K.W.
Webster	"	760 "
Redfield	"	900 "
Faulkton	"	110 "
Huron	"	1,130 "
Highmore	"	140 "
Mitchell	"	7,500 "
Armour	"	980 "
Yankton	"	1,540 "
		19,310 K.W.

DAKOTA PUBLIC SERVICE COMPANY

Beulah Station		6,000 K.W.
Bismarck	"	2,250 "
Dickinson	"	700 "
Mott	"	230 "
Motridge	"	1,000 "
Ellendale	"	400 "
Lemmon	"	235 "
Gettysburg	"	140 "
		10,955 K.W.

Total All Companies 30,265 K.W.

These ratings were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1940 and ending December 31, 1940.

Signed this January 1, 1940.

NORTHWESTERN PUBLIC SERVICE COMPANY

By _____

DAKOTA PUBLIC SERVICE COMPANY

By _____

Plaintiff's Exhibit 31.

307

EXHIBIT "C"

SUPPLEMENT TO

INTERCHANGE CAPACITY AGREEMENT CANCELLED

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

The Company System Maximum demands as listed below were established on December 19, 1939, by multiplying by two the net total output in kilowatt hours during the half hour from 5:30 P.M. to 6 P.M.

NORTHWESTERN PUBLIC SERVICE COMPANY	16,269 K.W.
DAKOTA PUBLIC SERVICE COMPANY	11,451 K.W.
TOTAL	27,720 K.W.

These Company System Maximum Demands were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1940 and ending December 31, 1940.

Signed this 1st day of January, 1940.

NORTHWESTERN PUBLIC SERVICE COMPANY

By _____

DAKOTA PUBLIC SERVICE COMPANY

By _____

Plaintiff's Exhibit 31.

EXHIBIT "D"

SUPPLEMENT NO

INTERCHANGE CAPACITY AGREEMENT

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

Summary for determination of firm capacity and demand charge:

	NORTHWESTERN PUBLIC SERVICE COMPANY	DAKOTA PUBLIC SERVICE COMPANY	TOTAL INTER-CONNECTED SYSTEM
Company Generating Capacities	19,310 K.W.	10,955 K.W.	30,265 K.W.
Company System Maximum 30 Min. Demands	16,269 K.W.	11,451 K.W.	27,720 K.W.
Reserve Capacities	3,041 K.W.	-496 K.W.	2,545 K.W.
Per Cent Reserve Capacity	18.6%	-4.3%	9.18%
Required K.W. Capacity for 9.18% Reserve	17,762 K.W.	12,503 K.W.	30,265 K.W.
Excess or Deficiency of Reserve Capacity	1,548 K.W.	-1,548 K.W.	--
Demand Charge @ $13.20 per kilowatt of deficiency of reserve capacity for the contract term beginning Jan. 1, 1940 and ending Dec. 31, 1940, Dakota Public Service Company		$20,433.60	
Demand Charge apportioned to Supplying Company (N.W.P.S. Co.)	$20,433.60		

These computations were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1940 and ending December 31, 1940.

Signed this 1st day of January, 1940.

NORTHWESTERN PUBLIC SERVICE COMPANY

By _____

DAKOTA PUBLIC SERVICE COMPANY

By _____

164 88

Plaintiff's Exhibit 31.

Northwestern Public Service Company
Exhibit F
to
Rate Schedule FPC No. 5-B
(Supersedes Company Exhibits B and D
of Commission Exhibit E)

SUPPLEMENT TO EXHIBIT "B"

INTERCHANGE CAPACITY AGREEMENT

CANCELLED

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

Rating of Generating Stations determined as of August 31, 1940:

NORTHWESTERN PUBLIC SERVICE COMPANY

Aberdeen Station	6,250 K.W.
Webster "	760 "
Redfield "	900 "
Faulkton "	110 "
Huron "	1,130 "
Highmore "	140 "
Mitchell "	7,500 "
Armour "	980 "
Yankton "	1,540 "
	19,310 K.W.

DAKOTA PUBLIC SERVICE COMPANY

Beulah Station	6,000 K.W.
Bismarck "	5,250 "
Dickinson "	700 "
Mott "	230 "
Mobridge "	1,000 "
Ellendale "	400 "
Lemmon "	235 "
Gettysburg"	140 "
	13,955 K.W.

FEDERAL POWER COMMISSION RECEIVED SEP - 9 1940

Total All Companies 33,265 K.W.

These ratings were determined and agreed to by the Committee on Operations and will apply for the contract term beginning September 1, 1940 and ending December 31, 1940.

Signed this 1st day of September, 1940.

NORTHWESTERN PUBLIC SERVICE COMPANY

By O. C. STOKES

DAKOTA PUBLIC SERVICE COMPANY

By J. W. CHESIRE

Plaintiff's Exhibit 31.

SUPPLEMENT TO EXHIBIT "D"

INTERCHANGE CAPACITY AGREEMENT

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

Summary for determination of firm capacity and demand charge:

	Northwestern Public Service Company	Dakota Public Service Company	Total Inter-Connected System
Company Generating Capacities	19,310 K.W.	13,955 K.W.	33,265 K.W.
Company System Maximum 30 Min. Demands	16,269 K.W.	11,451 K.W.	27,720 K.W.
Reserve Capacities	3,041 K.W.	2,504 K.W.	5,545 K.W.
Per Cent Reserve Capacity	18.692%	21.867%	20.004%
Required K.W. Capacity for 20% Reserve	19,523 K.W	13,742 K.W.	33,265 K.W.
Excess or Deficiency of Reserve Capacity	-213 K.W.	213 K.W.	--
Demand Charge @ $13.20 per kilowatt of deficiency of reserve capacity for the contract term beginning September 1, 1940 and ending December 31, 1940, Northwestern Public Service Company	$2,811.60		
Demand Charge apportioned to Supplying Company (D.P.S.Co.)		$2,811.60	

FEDERAL POWER COMMISSION
RECEIVED
SEP - 9 1940

These computations were determined and agreed to by the Committee on Operations and will apply for the contract term beginning September 1, 1940 and ending December 31, 1940.

Signed this 1st day of September, 1940.

NORTHWESTERN PUBLIC SERVICE COMPANY

By O. C. STOKES

DAKOTA PUBLIC SERVICE COMPANY

By J. W. CHESIRE

Exhibit
to
Rate Schedule FPC No. 5-B
(Supersedes Company Exhibit C of
Commission Exhibit E; also
Commission Exhibit F)

SUPPLEMENT TO

INTERCHANGE CAPACITY AGREEMENT

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

Rating of Generating Stations determined as of December 31, 1940:

NORTHWESTERN PUBLIC SERVICE COMPANY

Aberdeen Station	6,250 K.W.
Webster "	760 K.W.
Redfield "	900 K.W.
Faulkton "	110 K.W.
Huron "	1,130 K.W.
Highmore "	140 K.W.
Mitchell "	7,500 K.W.
Armour "	980 K.W.
Yankton "	2,520 K.W.
	29,290 K.W.

DAKOTA PUBLIC SERVICE COMPANY

Beulah Station	6,000 K.W.
Bismarck "	5,250 K.W.
Dickinson "	700 K.W.
Mott "	230 K.W.
Mobridge "	1,000 K.W.
Kilendale "	400 K.W.
Lemmon "	235 K.W.
Gettysburg "	140 K.W.
	13,955 K.W.

Total All Companies 34,245 K.W.



These ratings were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1941 and ending December 31, 1941.

Signed this 1st day of January, 1941.

NORTHWESTERN PUBLIC SERVICE COMPANY

By O. C. STOKES

DAKOTA PUBLIC SERVICE COMPANY

By J. W. CHESIRE

Plaintiff's Exhibit 31.

SUPPLEMENT TO EXHIBIT "C"

INTERCHANGE CAPACITY AGREEMENT

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

The Company System Maximum demands as listed below were established on December 18, 1940, by multiplying by two the net total output in kilowatt hours during the half hour from 5:30 P.M. to 6 P.M.

NORTHWESTERN PUBLIC SERVICE COMPANY	16,681 K.W.
DAKOTA PUBLIC SERVICE COMPANY	11,930 K.W.
TOTAL	28,611 K.W.

These Company System Maximum Demands were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1941 and ending December 31, 1941.

Signed this 1st day of January, 1941.

NORTHWESTERN PUBLIC SERVICE COMPANY

By O. C. STOKKE

DAKOTA PUBLIC SERVICE COMPANY

By J. W. CHESIRE

RECEIVED
DIVISION OF

Plaintiff's Exhibit 31.

SUPPLEMENT TO EXHIBIT "D"

INTERCHANGE CAPACITY AGREEMENT

NORTHWESTERN PUBLIC SERVICE COMPANY
DAKOTA PUBLIC SERVICE COMPANY

Summary for determination of firm capacity and demand charge:

	NORTHWESTERN PUBLIC SERVICE COMPANY	DAKOTA PUBLIC SERVICE COMPANY	TOTAL INTERCONNECTED SYSTEM
Company Generating Capacities	20,290 K.W.	13,955 K.W.	34,245 K.W.
Company System Maximum 30 Min. Demands	16,681 K.W.	11,930 K.W.	28,611 K.W.
Reserve Capacities	3,609 K.W.	2,025 K.W.	5,634 K.W.
Per Cent Reserve Capacity	21.63%	16.97%	19.692%
Required K.W. Capacity for 19.692% Reserve	19,966 K.W.	14,279 K.W.	34,245 K.W.
Excess or Deficiency of Reserve Capacity	324 K.W.	—324 K.W.	—
Demand Charge @ $13.20 per kilowatt of deficiency of reserve capacity for the contract term beginning January 1, 1941 and ending December 31, 1941, Dakota Public Service Company		$4,276.80	
Demand Charge apportioned to Supplying Company (N.W.P.S. Co.)	$4,276.80		

These computations were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1941 and ending December 31, 1941.

Signed this 1st day of January, 1941.

NORTHWESTERN PUBLIC SERVICE COMPANY

By O. C. STOKKE

DAKOTA PUBLIC SERVICE COMPANY

By J. W. CHESIRE

Plaintiff's Exhibit 31.

Plaintiff's Exhibit 34 is the same as Plaintiff's Exhibit FPC No. 14, and Plaintiff's Exhibit 34 contains only documents hereinbefore printed except for some formal letters transmitted, having nothing to do with Defendant's Rate Schedule No. 6.

Plaintiff's Exhibit 35 contains the 1941 contract and Exhibit A thereto, and the 1943 amendment, all of which are printed above as Exhibit F to the complaint (R. p. 87, supra).

Plaintiff's Exhibit 35 includes also six (6) sheets of supplements to interchange capacity agreement and notice of cancellation and attached letter of February 27, 1946, all of which are printed above as part of Plaintiff's Exhibit 22 (R. p. 249, supra).

Plaintiff's Exhibits 38, 39, 40 and 41, consisting of certified copies of applications filed with FPC by certain individuals for authorization under Section 305 (b) of Part III, Title II of "Public Utility Act of 1935" are as follows:

Plaintiff's Exhibit 38 reads as follows:

(Plaintiff's Exhibit 38.)

Federal Power Commission
Oct. 25, 1935
Received

Northwestern
Public Service Company
385 North Pine St.
Grand Island, Nebraska

Office
of the
President

October 23, 1935.

Federal Power Commission,
Washington,
D. C.

Gentlemen:

Attached herewith application for authorization under Section 305 (b) of Part III, Title II, of the "Public Utility Act of 1935".

Sincerely,

FEK:vlb
encl (3)

FRANK E. KRUESI.

Federal Power Commission
Oct. 25, 1935
Received
Docketed: 12/6/35
Secretary's Office RDH

Before the Federal Power Commission.

Application for Authorization under Section 305 (b) of Part III, Title II, of the "Public Utility Act of 1935". } Docket No.....

The undersigned, Frank E. Kruesi, files this application and respectfully states that:

I. The full name, occupation, business address, place of residence and post office address of the applicant are as follows:

(a) Full name—Frank E. Kruesi.

(b) Occupation—Public utility executive .

(c) Business address—385 No. Pine Street, Grand Island, Nebraska.

(d) Place of Residence—1804 West Division St., Grand Island, Nebraska.

(e) Post Office Address—Grand Island, Nebraska.

II. The name and address of every public utility and of every bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility and of any company supplying electrical equipment to such public utility, of which applicant holds stock, bonds, or notes, individually, as trustee, or otherwise, and the amount of the securities owned or held by him, are as follows:

(a) Northwestern Public Service Company (an electric and gas utility) National Bank of Huron Building, Huron, South Dakota, of which the applicant owns or holds the following securities:

(1) One (1) share without par value of Common Stock. These securities stand of record in the name of the applicant as nominee of North West Utilities Company of 20 North Wacker Drive, Chicago, Illinois, which is the beneficial owner thereof.

(b) North Dakota Power and Light Company (an electric and steam heat utility), National Bank of Huron Building, Huron, South Dakota, of which applicant owns or holds no securities.

(c) Northern Power and Light Company (an electric and steam heat utility), National Bank of Huron Building, Huron, South Dakota, of which applicant owns or holds no securities.

III. Each and every position held with any public utility, bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or any company supplying electrical equipment to such public utility, which is now held by applicant and which he seeks authority to hold; the date and manner of his election thereto;

the nature of the duties performed; and the date when he first entered upon their performance, are as follows:

(a) President and Director of Northwestern Public Service Company.

(b) President and Director of North Dakota Power and Light Company.

(c) President and Director of Northern Power and Light Company.

Applicant was elected a Director of Northwestern Public Service Company by vote of the stockholders at a meeting held April 16, 1935, and was elected President of said Company on April 30, 1935, by vote of the Board of Directors. Applicant was elected a Director of North Dakota Power and Light Company by vote of the stockholders at a meeting held April 16, 1935, and was elected President of said Company on April 30, 1935 by vote of the Board of Directors. Applicant was elected Director of Northern Power and Light Company by vote of the stockholders at a meeting held April 16, 1935, and was elected President of said Company on April 30, 1935, by vote of the Board of Directors.

Applicant was first elected a Director of Northwestern Public Service Company on January 30, 1928, and as President of said Company on June 15, 1933, and since said respective dates has continuously been re-elected and served as an officer and director of said Company. Applicant was first elected a Director and President of North Dakota Power & Light Company on June 15, 1933, and has been annually re-elected and has served continuously as President and Director of said Company since that date. Applicant was first elected a Director and President of Northern Power and Light Company on June 15. 1933 and has been annually re-elected and has served continuously as President and Director of said Company since that date.

IV. The relationship existing between all the corporations hereinbefore named in this application is as follows:

Northwestern Public Service Company is controlled through ownership of common stock by North West Utilities Company which is controlled by Middle West Utilities Company. North Dakota Power and Light

Company and Northern Power and Light Company are subsidiaries of United Public Utilities Corporation, in which Middle West Utilities Company has a substantial stock interest, at present non voting. The three operating companies mentioned in subdivision three maintain a single organization to take care of general accounting, billing and executive administration of the three companies, prorating the expense on the basis of their respective gross earnings.

V. Every business corporation (industrial, financial or otherwise) of which applicant is an officer or director, trustee, receiver, attorney or agent, and every public utility, bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility and every company supplying electrical equipment to a public utility in which applicant has a financial interest, and the general character of the business conducted by such corporation, are as follows:

(a) Applicant is an officer and/or director of the following business or industrial, et cetera, corporations:

(1) Knife River Coal Mining Company, Beulah, North Dakota—President and Director. This Company operates a lignite mine at Beulah, North Dakota.

(2) Central Power Company, Grand Island, Nebraska—President and Director. There is one share of $100 par value in the name of applicant as nominee of Middle West Utilities Company, Chicago, Illinois, which is the beneficial owner thereof.

(b) Applicant has no financial interest in any public utility, or in any bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility or any company supplying electrical equipment to a public utility, *other* than as reported Paragraph II hereof.

VI. Since January 1, 1935, the applicant has not received for his own benefit, directly or indirectly, any money or

thing of value in respect of the negotiation, hypothecation or sale of any securities issued by a public utility, nor has he shared in any of the proceeds thereof.

VII. The granting of the authority sought will not affect adversely either public or private interests for the following reasons:

While the character of the business of the said companies named in this application is substantially the same, that is, that of an electric utility and/or gas utility and/or steam heat utility, and the companies operate in contiguous territory the business of the companies is not competitive as none of the companies operate in the same territory served by another of the companies. The companies are all comparatively small and applicant is familiar with the properties and operations of each Company and his salary as an officer is spread over all companies, thereby effecting an economy to each. There are no matters, of which the applicant is aware, in which the interests of the said companies conflict.

VIII. No other application for similar authority has been made by the applicant.

The term "public utility", is used in this application as that term is defined in Section 201, Title II, of the Public Utility Act of 1935. In submitting this application, the applicant stipulates that the filing thereof shall not be construed as an admission of the legality or constitutionality of said Act or any part thereof or as a waiver of any legal or constitutional rights or as an admission on the part of applicant that any corporation referred to herein as a public utility is subject to any of the provisions of said Act.

FRANK E. KRUESI,
Signature of Applicant.

State of Nebraska }
County of Hall } ss.

I, Frank E. Kruesi, make oath and say that I hold no position as officer or director of any public utility or other business corporation except as indicated in the foregoing application, and that all of the statements contained

therein are [are] true and correct to the best of my knowledge and belief.

FRANK E. KRUESI.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 23rd day of October, 1935.

VERA L. BAUMAN,
(Seal) Notary Public.

My commission expires February 17, 1939.

Plaintiff's Exhibit 39 consists of the application of C. J. Strike, verified October 21, 1935, for authority to hold the positions of vice president and director of defendant, North Dakota Power & Light Company and Northern Power & Light Company, and contains similar information to that set forth in Plaintiff's Exhibit 38 and paragraphs IV, VI, VII and VIII of Exhibit 39 are identical with paragraphs IV, VI, VII and VIII of Exhibit 38.

Plaintiff's Exhibit 40 consists of the application of C. L. Sandstedt, verified on October 21, 1935, for authority to hold the positions of secretary, treasurer and director of defendant, North Dakota Power & Light Company and Northern Power & Light Company, and contains similar information to that set forth in Plaintiff's Exhibit 38, and paragraphs IV, VI, VII and VIII of Exhibit 40 are identical with paragraphs IV, VI, VII and VIII of Exhibit 38.

Plaintiff's Exhibit 41 consists of the application of J. F. Buckmier, verified on October 21, 1935, for authority to hold the positions of auditor and director of defendant and the position of auditor of North Dakota Power & Light Company and Northern Power & Light Company, and contains similar information to that set forth in Plaintiff's Exhibit 38, and paragraphs VI, VII and VIII of Exhibit 41 are identical with paragraphs VI, VII and VIII of Exhibit 38.

Plaintiff's Exhibits 42, 43, 44 and 45, consisting of applications for authority to hold interlocking positions, filed with FPC by certain individuals, are as follows:

Plaintiff's Exhibit 44 consists of the application of A. B. Sanborn, verified December 27, 1938, for authority to hold interlocking positions as president and director of defendant, Northern Power & Light Company and North Dakota Power & Light Company. This exhibit consists of 34 pages and one exhibit, and contains the same kind of information set forth in Plaintiff's Exhibit 38 in greater detail and with some additions thereto, including the following:

B. List of positions within the purview of Sec. 305 (b) of the act for which authorization is sought:

Position	Name of Corporation	Classification: ((1) Public utility, (2) Authorized by law to underwrite, (3) Supplying electrical equipment)
Director and President	Northwestern Public Service Company	(1) Public utility
Director and President	Northern Power and Light Company	(1) Public utility
Director and President	North Dakota Power and Light Company	(1) Public utility

Northwestern Public Service Company, Northern Power and Light Company, North Dakota Power and Light Company and Knife River Coal Mining Company (see subsection G) jointly maintain a central office in the City of Huron, South Dakota, with an executive staff and a central organization to carry on the business of the respective companies. All joint expenses, including salaries, rent, telephone and telegraph, traveling expenses, stationery, printing and office supplies, etc. (except the salaries and expenses of the engineering department, commercial department, central billing department and load dispatchers which are allocated monthly between the three named public utility companies in the same ratio that the gross operating revenues of each public utility company for the preceding calendar month bears to the combined gross operating revenues of said companies for said preceding calendar month) are allocated monthly to the four companies in the same ratio that the gross operating revenues of each of the four companies for the calendar month bears to the combined gross operating revenues of said four companies for said preceding calendar month.

C. Data as to positions with each public utility mentioned in subsection B of this Sec. 45.8:

(1) Name of public utility, state and date of incorporation (if any), and address of principal place of business:

Ans. Northwestern Public Service Company, incorporated on or about November 27, 1923, under the laws of the State of Delaware, and the address of its principal place of business is National Bank of Huron Building, Huron, South Dakota.

(2) States in which public utility is doing business or is qualified to do business:

Ans. Northwestern Public Service Company is qualified to do business and is doing business in the States of South Dakota and Nebraska.

(3) Description of the facilities owned or operated by the public utility for the transmission of electric energy in interstate commerce or the sale of electric energy at wholesale in interstate commerce, and of the interconnection of such facilities with those of any other corporation:

Ans. Northwestern Public Service Company owns and operates, for the transmission of electric energy in interstate commerce, a 13,200 volt, three phase, wood pole distribution line from junction west of Springfield, S. D. to Niobrara, Nebraska; and a 2,300 volt, three phase, wood pole rural distribution line from Springfield, South Dakota, to Santee, Nebraska.

Northwestern Public Service Company also has facilities for the transmission of electric energy through 33,000 volt and 22,000 volt, three phase, wood pole transmission lines, interconnected with transmission lines of Northern Power and Light Company, at Gettysburg, Barnard and Ipswich, South Dakota. Northwestern Public Service Company also has facilities for the transmission of electric energy through a 33,000 volt, three phase, wood pole transmission line, interconnected with a transmission line of Central Power Company, at Central City, Nebraska. Northwestern Public Service Company also has interchange connections with Northern States Power Company near Ethan, South Dakota, and with the municipal system of Watertown, South Dakota.

Northwestern Public Service Company also sells electric energy to Elkhorn Valley Power Company near Creston,

Nebraska, by means of a 33,000 volt, three phase, wood pole transmission line; and to Central West Power Company near Woonsocket, South Dakota, by means of a 33,000 volt, three phase, wood pole transmission line. A map showing the location of the electric properties and facilities of Northwestern Public Service Company (and indicating all interconnections and the principal cities and areas served) is filed herewith as Exhibit A.

Ans. Since July 1, 1938, applicant has received from Northwestern Public Service Company, Northern Power and Light Company, North Dakota Power and Light Company and Knife River Coal Mining Company the sum of $1,000 per month and applicant expects to receive from said companies for the ensuing 12 months the sum of $12,000. The basis for the compensation received and to be received by applicant is for services rendered as President of said companies. Applicant's compensation for services to said companies is paid directly by Northwestern Public Service Company and is allocated to said companies on the basis of the arrangement described in subsection B, approximately as follows:

Northwestern Public Service Company	63.7%
Northern Power and Light Company	12.3%
North Dakota Power and Light Company	19.8%
Knife River Coal Mining Company	4.2%

(11) Name and address of principal place of business of any corporation which renders management, construction or other service to the public utility pursuant to contract or other continuing arrangement.

Ans. Middle West Service Company (a wholly owned subsidiary of The Middle West Corporation), 20 North Wacker Drive, Chicago, Illinois.

(2) States in which public utility is doing business or is qualified to do business:

Ans. Northern Power and Light Company is qualified to do business and is doing business in the States of North Dakota and South Dakota.

(3) Description of the facilities owned or operated by the public utility for the transmission of electric energy in interstate commerce or the sale of electric energy at

wholesale in interstate commerce, and of the interconnection of such facilities with those of any other corporation:

Ans. Northern Power and Light Company owns and operates, for the transmission of electric energy in interstate commerce, a 22,000 volt, three phase, wood pole transmission line from Ellendale, North Dakota, to Barnard, South Dakota; a 38,000 volt, three phase, wood pole transmission line from Wishek, North Dakota, to Bowdle, South Dakota; a 6,600 volt, three phase, wood pole distribution line from Hague, North Dakota, to Hague Substation, South Dakota; a 2,300 volt, three phase, wood pole distribution line from Zealand, North Dakota, to Artas, South Dakota; and a 13,200 volt, three phase, wood pole distribution line from Selfridge, North Dakota, to the junction of the McLaughlin-McIntosh 38,000 volt, three phase, wood pole transmission line near McLaughlin, South Dakota.

Northern Power and Light Company also has facilities for the transmission of electric energy through a 22,000 volt, three phase, wood pole transmission line interconnected with the transmission lines of Northwestern Public Service Company at Gettysburg, Barnard and Ipswich, South Dakota. Northern Power and Light Company also has facilities for the transmission of electric energy through a 38,000 volt, three phase, wood pole transmission line interconnected with the transmission line of North Dakota Power and Light Company at the North Dakota-South Dakota state line near Keldron, South Dakota and at Driscoll, North Dakota. A map showing the location of the electric properties and facilities of Northern Power and Light Company (and indicating all interconnections and the principal cities and areas served) is filed herewith as Exhibit A.

(3) Description of the facilities owned or operated by the public utility for the transmission of electric energy in interstate commerce or the sale of electric energy at wholesale in interstate commerce, and of the interconnection of such facilities with those of any other corporation:

Ans. All of the facilities owned and operated by North Dakota Power and Light Company for the transmission of electric energy are located wholly within the State of North Dakota. The facilities of North Dakota Power and Light

Company are interconnected with the facilities of Northern Power and Light Company at Driscoll, North Dakota, and at the North Dakota-South Dakota state line near Keldron, South Dakota. A map showing the location of the electric properties and facilities of North Dakota Power and Light Company (and indicating the said interconnections and the principal cities and areas served) is filed herewith as Exhibit A.

(2) Any corporate, contractual, financial, or business relationship between any of the corporations listed in item (1) above and any of the public utilities listed in subsection B of this section 45.8.

Ans. Knife River Coal Mining Company, a wholly owned subsidiary of United Public Utilities Corporation, is engaged in the business of mining lignite coal near Beulah, North Dakota. During the calendar year 1937, Knife River Coal Mining Company sold 296,656 tons of coal, of which 49,834 tons were purchased by Northwestern Public Service Company for fuel for its electric generating plant at Aberdeen, South Dakota; 2,238 tons were purchased by Northern Power and Light Company for fuel for its electric generating plant at Ellendale, North Dakota; and 102,325 tons were purchased by North Dakota Power and Light Company for fuel for its electric generating plants at Beulah and Bismarck, North Dakota.

During the year 1937, North Dakota Power and Light Company sold steam to Knife River Coal Mining Company for use at its coal mine. See subsection B for the operating arrangement of the central organization at Huron, South Dakota, of Knife River Coal Mining Company, Northwestern Public Service Company, Northern Power and Light Company and North Dakota Power and Light Company.

H. Data as to the public utility holding company system.

(1) The name of the public utility holding company system of which each public utility listed in subsection B of Sec. 45.8 is a part.

Ans. Northwestern Public Service Company is a part of the public utility holding company system of North West Utilities Company, a subsidiary holding company of The Middle West Corporation, public utility holding company system.

Northern Power and Light Company and North Dakota Power and Light Company are a part of the public utility holding company system of United Public Utilities Corporation.

(2) The financial and corporate relationship existing between and among the corporations in the above holding company system, including the percentage of voting power represented by securities owned by the corporation preceding each corporation in the corporate structure of the system.

Ans. (A) The Middle West Corporation, parent of North West Utilities Company, at October 31, 1938, owned the following percentages of voting classes of securities of North West Utilities Company: (a) 100% of the outstanding Common Stock ($100 par value), (b) 33.23% of the outstanding Seven Per Cent Prior Lien Cumulative Preferred Stock ($100 par value), (c) 35.55% of the outstanding Seven Per Cent Cumulative Preferred Stock ($100 par value) and (d) 100% of the outstanding $6 Cumulative Preferred Stock (no par value), together constituting 82.36% of the total outstanding voting shares of all classes of said Company.

(B) North West Utilities Company, parent of Northwestern Public Service Company, at October 31, 1938, owned 100% of the outstanding Common Stock (without par value) of Northwestern Public Service Company, constituting 54.88% of the total outstanding voting shares of all classes of said Company.

(C) The Middle West Corporation at October 31, 1938, owned the following percentages of voting securities of the United Public Utilities Corporation: (a) 4.62% of the outstanding Class A Common Stock ($1 par value), which stock has been deposited under a voting trust agreement dated January 1, 1935, for a period of five years from said date, pursuant to a plan of reorganization of United Public Utilities Company, confirmed December 5, 1934, by the District Court of the United States for the Northern District of Illinois, Eastern Division, in proceedings for the reorganization of United Public Utilities Company pursuant to the provisions of Section 77 (B) of the Federal Bank-

ruptcy Act, as then amended, (b) 1.40% of the outstanding Cumulative Preferred Stock (no par value) $3 Dividend Series, and (c) 8.30% of the Cumulative Preferred Stock (no par value) $2.75 Dividend Series, together constituting 4.62% of the total outstanding shares of all classes of said Company presently voting.

At October 31, 1938, United Public Service Corporation (50.0063% of whose capital stock ($1 par value) is owned by The Middle West Corporation) owned 65.99% of the outstanding Class B Common Stock of United Public Utilities Corporation. At said date, The Middle West Corporation also owned 1.04% of said Class B Common Stock. At said date Class B Common Stock had no voting rights other than the exclusive right to elect one director of United Public Utilities Corporation.

(D) United Public Utilities Corporation at October 31, 1938, owned 100% of the total outstanding shares of all classes of Northern Power and Light Company and North Dakota Power and Light Company.

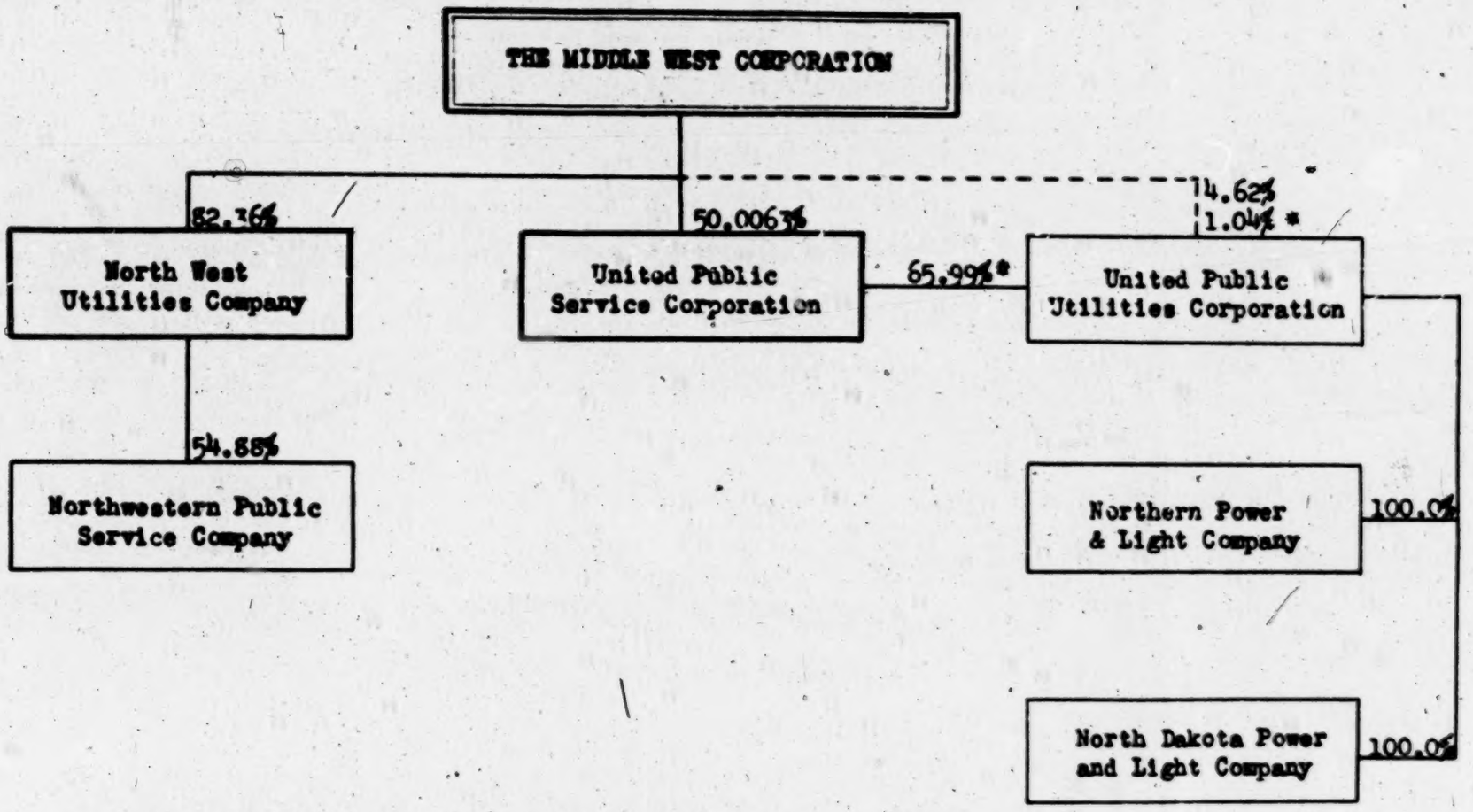
A chart indicating the financial and corporate relationship existing between said holding companies and said utility companies is filed herewith as Exhibit B.

(3) The name of each public utility holding company, listed in item (1) of this subsection H, which has registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935. Give date of registration.

Ans. North West Utilities Company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 on December 1, 1935, File No. 30-44.

The Middle West Corporation registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 on December 1, 1935, File No. 30-48.

United Public Utilities Corporation registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 on November 30, 1935, File No. 30-7.



KEY -
Percentage indicates voting stock control
Broken line represents ownership of 50% or less of voting securities
* Class B common stock (voting power restricted to election of one director)

As of October 31, 1938

Exhibit B

Plaintiff's Exhibit 42 consists of the application by G. R. McArthur, verified January 7, 1939, for authority to hold the positions of vice president and director of defendant, Northern Power & Light Company and North Dakota Power & Light Company, and contains the same kind of information and data as that set out in Plaintiff's Exhibit 44.

Plaintiff's Exhibit 43 consists of the application by E. W. Dempewolf, verified January 12, 1939, for authority to hold the positions of assistant secretary and assistant treasurer of defendant, Northern Power & Light Company and North Dakota Power & Light Company, and contains the same kind of information and data as that set out in Plaintiff's Exhibit 44.

Plaintiff's Exhibit 45 consists of the application of William M. Dunn, verified October 3, 1944, for authority to hold the positions of treasurer and director of defendant and of Dakota Public Service Company, and contains the same kind of information and data as that set forth in Plaintiff's Exhibit 44 and also states in part as follows:

B. List of positions within the purview of Section 305 (b) of the act for which authorization is sought.

Position	Name of Corporation	Classification: (1) Public utility, (2) Authorized by law to underwrite, (3) Supplying electrical equipment
Treasurer and Director	Northwestern Public Service Company	(1) Public utility
Treasurer and Director	Dakota Public Service Company	(1) Public utility

(2) Any corporate, contractual, financial or business relationship between any of the corporations listed in item (1) above and any of the public utilities listed in subsection B of this section 45.8.

Knife River Coal Mining Company, a wholly owned subsidiary of United Public Utilities Corporation, a registered

public utility holding company, is engaged in the business of mining lignite coal near Beulah, North Dakota. During the calendar year 1943 Knife River Coal Mining Company sold 315,128 tons of coal, of which 46,479 tons were purchased by Northwestern for fuel for its electric generating plant at Aberdeen, South Dakota, and 133,872 tons were purchased by Dakota for fuel for its electric generating plants at Ellendale, Beulah, Bismarck and Mandan, North Dakota.

During the calendar year 1943 Dakota sold steam heat to Knife River Coal Mining Company for use at its coal mine. Reference is made to the answer to Item 10 of subsection C of this application for a statement of the operating arrangement of the central organization at Huron, South Dakota, of Knife River Coal Mining Company, Northwestern and Dakota.

H. Data as to the public utility holding company system.

(1) The name of the public utility holding company system of which each public utility listed in subsection B of Section 45.8 is a part.

Northwestern is a part of the public utility holding company system (as that term is defined in the Public Utility Holding Company Act of 1935) of North West Utilities Company and of The Middle West Corporation, registered holding companies.

Dakota is a part of the public utility holding company system of United Public Utilities Corporation, a registered holding company.

(2) The financial and corporate relationship existing between and among the corporations in the above holding company system, including the percentage of voting power represented by securities owned by the corporation preceding each corporation in the corporate structure of the system.

At August 31, 1944, North West Utilities Company owned all of the 52,150 outstanding shares without par value of the common stock of Northwestern, such shares constitut-

ing 100% of the total outstanding voting shares of all classes of stock of Northwestern.

At August 31, 1944, The Middle West Corporation owned the following securities of North West Utilities Company, together constituting 85.49% of the total outstanding voting shares of all classes of stock of North West Utilities Company: (a) all of the 260,531 outstanding shares of Common Stock of the par value of $1.00 per share, (b) 26,573 shares (or 60.39%) of the 44,000 outstanding shares of Seven Per Cent Prior Lien Preferred Stock of the par value of $100 per share, (c) 21,687 shares (or 35.70%) of the 60,755 outstanding shares of Seven Per Cent Preferred Stock of the par value of $100 per share, and (d) all of the 24,000 outstanding shares of $6 Cumulative Preferred Stock without par value.

At August 31, 1944, The Middle West Corporation also owned 315 shares (or 1.43%) of the 22,023 outstanding shares of Seven Per Cent Cumulative Preferred Stock of the par value of $100 per share and 105 shares (or 0.59%) of the 17,829 outstanding shares of Six Per Cent Cumulative Preferred Stock of the par value of $100 per share of Northwestern. The preferred stock of Northwestern is not currently entitled to vote for the election of directors.

At August 31, 1944, The Middle West Corporation also owned 172,393 shares (or 56.34%) of the 305,994 outstanding shares of capital stock (par value 25 cents per share) of United Public Service Corporation, constituting 56.34% of the total outstanding voting share of stock of that company.

At August 31, 1944, United Public Service Corporation owned 148,055 shares (or 66.88%) of the 221,380 outstanding shares of Class B Common Stock (of the par value of $1.00 per share) of United Public Utilities Corporation. At present, the Class B Common Stock of that company has no voting rights other than the exclusive right to elect one director.

At August 31, 1944, United Public Utilities Corporation owned all of the issued and outstanding securities of Da-

kota, as follows: (a) 8,370 shares of Common Stock without par value, constituting 100% of the outstanding voting shares of stock of Dakota, (b) $1,000,000 principal amount of First and Refunding 6% Gold Bonds, Series B, dated October 1, 1926, and due October 1, 1946, of Northern Power and Light Company, assumed by Dakota, (c) $3,000,000 principal amount of Ten-Year Six Per Cent Notes, due June 30, 1949; and (d) $1,335,794 principal amount of Ten-Year Six Per Cent Non-Cumulative Income Notes, due June 30, 1949.

A chart indicating the financial and corporate relationship existing as of August 31, 1944 between the above named corporations is filed herewith as Exhibit B.

(3) The name of each public utility holding company listed in item (1) of this subsection H, which has registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935. Give date of registration.

North West Utilities Company; December 1, 1935.

The Middle West Corporation; December 1, 1935.

United Public Utilities Corporation; November 30, 1935.

Exhibit B.

Chart indicating financial and corporate relationship existing as of August 31, 1944, between the corporations hereinafter named:

Part I

	% of Voting Control	
The Middle West Corporation		
North West Utilities Company.....	85.49%	
Northwestern Public Service Company.....	100.00%	(1)
United Public Service Corporation (Note 2).	56.34%	

Part II

United Public Utilities Corporation
Dakota Public Service Company..... 100%

(1) The Middle West Corporation also owns 315 shares (or 1.43%) of the Seven Per Cent Cumulative Preferred Stock and 105 shares (or 0.59%) of the Six Per Cent Cumulative Preferred Stock of Northwestern; such shares are not currently entitled to vote for the election of directors.

(2) United Public Service Corporation owns 148,055 shares of the 221,380 outstanding shares of Class B Common Stock of United Public Utilities Corporation, constituting approximately 66.88% of that class and approximately 39.98% of the aggregate number (370,300) of the outstanding shares of common stock of all classes of United Public Utilities Corporation. At present, the voting rights of the Class B Common Stock are restricted to the exclusive right to elect one director. United Public Utilities Corporation also has outstanding 148,920 shares of preferred stock which are now entitled to vote (one vote per share) for the election of directors.

For further detail, see answer to Item (2) of subsection H of application.

Plaintiff's Exhibit 46, consists of certificate of concurrence by Dakota Public Service Company in defendant's rate schedule FPC No. 4 (the 1938 Interchange Capacity Agreement) dated December 22, 1939, bearing identification and filing date by FPC of December 28, 1939, and signed by A. B. Sanborn, President of Dakota Public Service Company.

Plaintiff's Exhibit 47, consists of certificate of concurrence by Dakota Public Service Company in defendant's rate schedule FPC No. 3 (the 1936 Interconnection Contract) dated December 22, 1939, bearing identification and filing date by FPC of December 28, 1939, and signed by A. B. Sanborn, President of Dakota Public Service Company.

Plaintiff's Exhibit 48, consists of certificate of concurrence by Dakota Public Service Company, and reads as follows:

DAKOTA PUBLIC SERVICE COMPANY.
Supplement No. 1
Effective Date: May 8, 1943
Filing Date: February 22, 1945
to
Rate Schedule FPC No. 4
(CONCURS In Northwestern Public Service Co.
Rate Schedule FPC No. 6.1)

Plaintiff Exhibit
FPC No. 47 [illegible]
Deputy [illegible]
identification

CERTIFICATE OF CONCURRENCE.

This is to certify that Dakota Public Service Company assents to and concurs in the rate schedule described below, which Northwestern Public Service Company filed, and hereby files this Certificate of Concurrence in lieu of the filing of the rate schedule specified.

Supplement No. 1 to Northwestern Public Service Company Rate Schedule FPC No. 6, being a Supplemental Agreement dated March 13, 1943 to the Interchange Power Agreement dated July 1, 1941, between Dakota Public Service Company and Northwestern Public Service Company.

Dated February 19, 1945.

DAKOTA PUBLIC SERVICE COMPANY
By [signature]
Treasurer

(Corporate Seal)

Finance - Statistics

Filed Feb 11 1948
Off of Mabel Peck

FEDERAL POWER COMMISSION
FEB 22 1945
RECEIVED

Plaintiff's Exhibit 48.

In the course of his testimony the witness Fuquay identified each of the foregoing documents. The foregoing portions of Exhibits reproduced above in connection with the testimony of the witness Fuquay contain all of the contracts, rate schedules and supplements thereto, filed by defendant, Northern Power & Light Co., North Dakota Power & Light Co., and Dakota Public Service Co., relating to inter-company transactions; and the documents and partial documents contained in the foregoing portions of the record with reference to the testimony of the witness Fuquay and reproduced herein in connection with such testimony and the letters and documents contained in plaintiff's Exhibits 26 and 34 constitute all of the material, records, correspondence to and from the Federal Power Commission, testimony, if any, before the Federal Power Commission, and minutes, orders and actions of the Federal Power Commission concerning the filing by defendant of defendant's rate schedules, numbers F. P. C. 1, 3, 4, 5-A, 5-B, 6 and all supplements thereto, and applications to give such rates retroactive effect.

Defendant objected to the entire line of testimony and to all of the exhibits as follows:

Mr. Benson: It is true, I think, that a couple of the letters are duplicated, introduced in another place for another purpose. I explained the situation to the Court before with reference to the taking of the deposition. The purpose of offering all of these exhibits in toto is disclosed by the question to the witness where he was asked to certify everything that was in the file prior to a certain date. The significance of which is to show what was before the Commission, and everything before the Commission, before its action or its attempted action on this rate. I can't do th. t and pull some of those letters out. I have got to ask him all that is before the Commission.

Mr. Woods: I wonder if it would not be in order for us to suggest, we reserve the objection to all of these exhibits they are irrevelant and immaterial, and particularly incompetent to impeach the action of the Federal Power Commission, or collaterally attack any order made by them, and ask that that objection may stand to all of this line

of testimony or exhibits obtained from the Federal Power Commission?

Mr. Benson: I don't assume the Court desires us now to read statements contained in this file which we will assert are misrepresentations.

The Court: That is a matter, I think, that is up to the attorneys, how they put in their proof.

Mr. Woods: Are you agreeable to our having that standing objection?

Mr. Benson: We don't object to that.

The Court: The record may show the standing objection to the evidence stated by Mr. Woods.

Further in the course of the testimony by the witness Fuquay the following transpired:

By Mr. Robinson:

Q. Mr. Fuquay, you are the same Mr. Fuquay who testified in connection with this deposition hearing at the office of the Federal Power Commission on October 29 and October 30, last? A. Yes.

Q. Now, on October 30, in answer to certain questions put to you by Mr. Schiff, you stated that you had made or caused to have been made a search of the records which are, and I will quote your language, "The official public records", page 119 of the transcript, and again on page 127 of the transcript, I direct your attention to the fourth line from the top of page 119 of the transcript, and I also direct your attention to page 127, the tenth line from the bottom of the page. A. Yes, I see it.

Q. And to page 128, the fifth and sixth lines from the top of the page. A. I see it.

Q. Now, in answer to certain questions asked you by Mr. Benson, both on October 29 and October 30, you referred to certain files as being the only files which you were able to find with respect to the particular matters referred to in Mr. Benson's questions. Now, Mr. Fuquay, I ask you whether, in answering the questions asked you by Mr. Benson, you were referring to all of the files and rec-

ords of the Federal Power Commission, or only to its official public records and files?

A. I was referring only to its official public records.

Q. Now, Mr. Fuquay, I direct your attention to Rule 36, and subdivision (c), entitled Public Records, and subdivision (d) thereof entitled Other Records, and I will ask you whether or not the Commission does have records and files other than the so-called public or official records and files of the Commission?

A. I think that is clearly implied from the rule itself.

Q. Now, in connection with the deposition hearing on October 29 and October 30, did you cause a search to be made of any of the files and records of the Federal Power Commission other than its official public files and records?

A. No, I did not.

Q. Then any statement that you made with [resepect] to any file or files being the only file or files which you could find would necessarily refer only to the official public records or files as distinguished from the confidential records and files of the Commission? A. That is correct.

Q. Now, Mr. Fuquay, on October 30, Mr. Schiff directed your attention to certain correspondence referring to a Mr. Alliman, and I direct your attention to page 135 of the transcript where he specifically, in his question, referred to the first paragraph of a certain letter which specifically referred to Mr. Alliman. I further direct your attention to page 136 of the transcript where Mr. Schiff's questions asked whether Mr. Alliman had made a survey report and asked whether, "Is it a proper way to ascertain an answer to this question by application to the Commission?" And to which question you answered "Yes". Now, Mr. Fuquay, I will ask you whether or not either Montana-Dakota Utilities Company or Northwestern Public Service Company has, as of this date, filed a request with the Commission for leave to see or examine any of the confidential files of the Commission?

A. I have not investigated to see whether that is true, or not.

Mr. Benson: You want to stipulate neither you nor we have asked to examine any private files of the Commission with reference to, and for the purpose of using the same in this litigation?

Mr. Robinson: That is correct.

Mr. Benson: I will so stipulate.

Q. I believe on October 30, you clarified for us the fact that you did not know what documents, files, records or other material the Commission had before it or considered when acting upon any of the matters that it has acted upon which are the subject matter of this deposition hearing. Now, you have stated that you produced all of the official public records which could be found in connection with any given request. No attempt was made, was it, by you, Mr. Fuquay, to produce annual reports and material of that nature at this hearing? A. No, there was none.

Q. There is material of that nature which is classified in the Federal Power Commission files as official public records? A. Yes, there are annual reports.

Q. By this last question you understood me to mean, did you not, annual reports filed by the company?

A. By various companies, yes.

Q. And, in accordance with my request, did you cause a check to be made of the official public files of the Federal Power Commission to ascertain whether Montana-Dakota Utilities Company ever filed a notice advising the Federal Power Commission of the termination of Northwestern Public Service Company Rate Schedule FPC No. 6 and Supplement No. 1 thereto?

A. I have had such a search made.

Q. And did you find any such notice? A. No, I did not.

Mr. Benson: You filed notice of termination. Are you going to offer the testimony?

Mr. Robinson: You offer the testimony.

Mr. Robinson: If the Court please, at this time the defendant would like to renew its objection to the testimony of the witness, Fuquay, as to what matters or things, what files, records, documents, evidence or other matters the Federal Power Commission had before it at the time that it acted upon any of the matters and things set forth in the evidence so far by the plaintiff, on the ground that the witness has definitely shown himself not to be competent to testify with respect to that matter, and we ask

that all of the testimony of the witness and the exhibits offered in support thereof or in connection therewith be stricken.

Mr. Benson: May it please the Court, we would like to have Rule No. 36 marked before replying to the motion.

Plaintiff's Exhibit 51, which was received in evidence, consists of certified copy of Rule 36 of FPC, and reads in part as follows:

(c) Public Records. Save as otherwise required by law, all matters of official record, other than information held confidential for good cause found, shall be available at the principal office of the Commission in Washington, D. C., to persons properly and directly concerned, upon application to the Office of the Secretary during regular office hours. Such official records shall include all matters filed with or submitted to the Commission under the provisions of any order, rule, or regulation of the Commission or any applicable statute, as well as matters embodying Commission action. In public proceedings before the Commission the docket records relating to such proceedings and the pleadings, transcript of testimony, exhibits, and all documents received in evidence or made a part of the record therein shall be likewise available for inspection and copying by the public, in so far as consistent with the proper discharge of the Commission's duties.

(d) Other Records. The records and files of the Commission, and all documents, memoranda, correspondence, exhibits, and information of whatever nature, other than the matters described in subparagraph (c) of this Rule, coming into the possession or within the knowledge of the Commission or any of its officers or employees in the discharge of their official duties, are confidential, and none of such material or information may be disclosed, divulged, or produced for inspection or copying except that, upon good cause shown, the Commission may by order direct that certain records, files, papers, or information be disclosed to a particular applicant.

Mr. Benson: It is our contention that the rule which I read, said that when any proceeding is instituted pursuant to the orders or rules of the Commission, and those are rate proceedings, that all of those records are public records, and there is no showing here—

Mr. Robinson: In view of the order which counsel has just read to the Court, I will amend our objection and not object to the documents which have been identified by the witness, Fuquay, but I will object to all of the testimony of the witness and ask that his testimony, other than merely identifying the documents, be stricken as indicating he is not in position to testify; he is incompetent to testify as to what record the Commission, itself, had before it when taking any action in connection with this matter.

The Court: As I understand it, the only purpose for the deposition at all was to lay the foundation for certain records of the Commission. There isn't any question under the evidence but what the documents and records which were referred to in the testimony of the witness have been identified as records of the Commission.

Mr. Robinson: We have no objection to that point. The point is, as counsel stated yesterday afternoon, there is testimony which counsel tried to elicit from this witness, he used the word "all", "All documents, or testimony or records". We state that this witness has shown definitely that this proceeding did not bring out all of such documents. We are merely objecting to the witness' testimony and the inference that might be drawn therefrom, that said witness did make available to us all of the documents and records. We are not objecting to the particular documents which have been offered as such.

The Court: As I recall it, this witness is secretary of the Commission, and has charge of the records. If anybody is competent to testify that he has submitted or has produced all of the records, he is able to find, he is the man that is able to do it.

Mr. Robinson: He told us he was not able to produce to us the private records because we did not get an order from the Commission.

The Court: All of the records that he produced here are public records and his evidence is sufficient foundation for the introduction of the documents referred to in his deposition as records of this Commission. The objection is overruled and motion denied and we will let the evidence stand.

The witness Fuquay testified that the legends which appear upon many of the foregoing exhibits on the upper right-hand corner thereof (for example, the legend appearing on the upper right-hand corner of Exhibit B to the complaint) which include the name of the filing company, the designation of the document as a rate schedule, the effective date of the document and the filing date were in each case placed thereon under the authority of FPC after receipt of the documents by that Commission.

At the close of the introduction by plaintiff of the deposition of the witness Fuquay defendant introduced in evidence Defendant's Exhibits 201-213, both inclusive, which are as follows:

Defendant's Exhibit 212 consists of a certified copy of the application of Margaret Frost to FPC, verified October 4, 1944 for authority to hold the positions of assistant secretary and assistant treasurer of defendant and Dakota Public Service Company, and contains the same kind of information and data, including the excerpts printed, as that contained in Plaintiff's Exhibit 45.

Defendant's Exhibit 213 consists of a certified copy of an application of Ralph Mauch to FPC, verified December 12, 1941, for authority to hold the positions of assistant secretary and assistant treasurer of defendant and Dakota Public Service Company, and contains the same kind of information and data as that contained in Plaintiff's Exhibit 44. Said application in part reads as follows:

B. List of positions within the purview of section 305 (b) of the act for which authorization is sought:

Position	Name of Corporation	Classification: ((1) Public utility, (2) Authorized by law to underwrite, (3) Supplying electrical equipment)
Assistant Secretary and Assistant Treasurer	Northwestern Public Service Company	(1) Public utility
Assistant Secretary and Assistant Treasurer	Dakota Public Service Company	(1) Public utility

(2) Any corporate, contractual, financial, or business relationships between any of the corporations listed in item (1) above and any of the public utilities listed in subsection B of this section 45.8.

Ans. Knife River Coal Mining Company, a wholly owned subsidiary of United Public Utilities Corporation, is engaged in the business of mining lignite coal near Beulah, North Dakota. During the calendar year 1940 Knife River Coal Mining Company sold 324,879 tons of coal of which 56,087 tons were purchased by Northwestern Public Service Company for fuel for its electric generating plant at Aberdeen, South Dakota; 112,161 tons were purchased by Dakota Public Service Company for its electric generating plants at Ellendale and Beulah, North Dakota.

During the year 1940 Dakota Public Service Company sold steam heat to Knife River Coal Mining Company for use at its coal mine. See subsection B for the operating arrangement of the central organization at Huron, South Dakota, of Knife River Coal Mining Company, Northwestern Public Service Company and Dakota Public Service Company.

H. Data as to the public utility holding company system.

(1) The name of the public utility holding company system of which each public utility listed in subsection B of Sec. 45.8 is a part.

Ans. Northwestern Public Service Company is a part of the public utility holding company system (as that term is defined in the Public Utility Holding Company Act of 1935) of North West Utilities Company and of The Middle West Corporation.

Dakota Public Service Company is a part of the public utility holding company system of United Public Utilities Corporation.

(2) The financial and corporate relationship existing between and among the corporations in the above holding company system, including the percentage of voting power represented by securities owned by the corporation preceding each corporation in the corporate structure of the system.

Ans. At June 30, 1941, The Middle West Corporation owned the following securities of North West Utilities Company, together constituting 85.49% of the total outstanding voting shares of all classes of stock of North West Utilities Company: (a) All of the 260,531 issued and outstanding shares of Common Stock, par value $1.00 per share; (b) 26,573 shares (or 60.39%) of the 44,000 issued and outstanding shares of Seven Per Cent Prior Lien Preferred Stock, cumulative, par value $100 per share; (c) 21,687 shares (or 35.7%) of the 60,755 issued and outstanding shares of Seven Per Cent Preferred Stock, cumulative; par value $100 per share; and (d) all of the 24,000 issued and outstanding shares of $6 Cumulative Preferred Stock without par value.

At June 30, 1941, North West Utilities Company owned all of the 52,150 issued and outstanding shares of Common Stock without par value of Northwestern Public Service Company, constituting 100% of the total outstanding voting shares of all classes of stock of Northwestern Public Service Company.

At June 30, 1941, The Middle West Corporation owned 315 shares (or 1.32%) of the 23,822 issued and outstanding shares of Seven Per Cent Cumulative Preferred Stock, par value $100 per share, and 105 shares (or .59%) of the 17,854 issued and outstanding shares of Six Per Cent Cumulative Preferred Stock, par value $100 per share of Northwestern Public Service Company. The preferred stock of Northwestern Public Service Company has no voting rights, except that if dividends on the preferred stock for dividend periods equal in the aggregate to 12 months become in default, the preferred stock in respect of which such default

exists becomes vested with equal voting power, share for share, with the Common Stock until such default is cured; at June 30, 1941, no dividends on any shares of preferred stock of Northwestern Public Service Company were in default.

At June 30, 1941, The Middle West Corporation owned 172,393 shares (or 54.64%) of the 315,532 issued and outstanding shares of Capital Stock, par value $1.00 per share, of United Public Service Corporation, constituting 54.64% of the total outstanding voting shares of stock of United Public Service Corporation.

At June 30, 1941, United Public Service Corporation owned 148,055 shares (or 65.99%) of the 224,352 issued and outstanding shares of Class B Common Stock of United Public Utilities Corporation. The Class B Common Stock of United Public Utilities Corporation has no voting rights other than the exclusive right to elect one director of United Public Utilities Corporation.

At June 30, 1941, United Public Utilities Corporation owned all of the issued and outstanding securities of Dakota Public Service Company, as follows: (a) 8,370 shares of Common Stock without par value, constituting 100% of the outstanding voting shares of stock of Dakota Public Service Company; (b) $1,000,000 principal amount of Northern Power and Light Company First and Refunding 6% Series B Gold Bonds, dated October 1, 1926, and due October 1, 1946, assumed by Dakota Public Service Company; (c) $3,000,000 principal amount of Ten-Year Six Per Cent Notes, due June 30, 1949; and (d) $1,335,794 principal amount of Ten-Year Non-Cumulative Income Notes, maximum interest 6%, due June 30, 1949.

The statements made above with respect to voting rights and voting power do not purport to give effect to voting rights existing under statutory or common law.

A chart indicating the financial and corporate relationships existing between the above named companies at June 30, 1941, is filed as Exhibit B to this application.

(3) The name of each public utility holding company listed in item (1) of this subsection H, which has registered

with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935. Give date of registration.

Defendant's Exhibit 204 consists of a certified copy of the order entered by FPC on February 18, 1936, and is as follows:

Authorizations under section 305 (b).

The Commission having under consideration the matter of the authorization of persons to hold the position of officer or director of more than one public utility or to hold the position of officer or director of a public utility and the position of officer or director of a bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility or officer or director of any company supplying electrical equipment to such utility, as provided in section 305 (b) of Part III of the Federal Power Act:

The following finding and order was adopted:

It appearing to the Commission:

That applications have been filed by certain persons, being those named in Exhibit "A" attached to and made a part of this order, under section 305 (b) of Part III of the Federal Power Act pursuant to Order No. 32 for authorization to hold certain positions of officer or director as set forth in such applications;

Now, therefore, the Commission having considered such applications, and upon the information therein contained, finds:

That the persons named in Exhibit "A" attached hereto, have severally made due showing in form and manner prescribed by the Commission in Order No. 32 with respect to positions of officer or director in corporations within the purview of section 305 (b) that neither public nor private interests will be adversely affected by the holding of such positions in such corporations.

sent the cost of the Aberdeen substation facilities to be. Is that right? A. That is right.

Q. At least, Mr. Buckmier, there was an account in your office, of which you were the auditing head, and what officer of the company at the time, on February 24, 1942?

A. I was secretary at that time.

Q. And secretary of the company. Figures showing the cost, among other things, of the Aberdeen substation facilities? A. That is what that shows there.

Q. That would be in your department? You are the keeper of the records? A. Not to determine the figure.

Q. You are the keeper of those records?

A. That is right.

Q. You produced these records here in court relating to the cost of these interconnection facilities, didn't you?

A. That is right.

Q. They were in your possession at the time, and you signed the contract as one of the officers of the company in which the figures of that sort were accumulated, for the one half of $303,000.00, and which you represented the cost of all of these to be? A. That is right.

Q. And despite that you say now, or did say a few moments ago, that you haven't the slightest recollection of ever having dealt with that figured cost of the Aberdeen substation at all? A. I did not determine that figure.

Q. Even if you didn't determine it, even if some adding machine or some typist determined it, was it ever brought to your attention as secretary of the company?

A. Not to my knowledge.

Q. But despite that fact you signed this contract in which it was represented that the total cost was $303,449.00? A. That appears to be my signature.

Q. Where did you get the figures in that contract that you signed which are the same as the figures in this letter?

A. I didn't get the figures. Someone else determined those figures.

Q. Who else would it be?

A. I presume it was Mr. Sandstedt.

Q. What was his position?

A. He was vice president and treasurer.

Q. Did he ever run the secretarial duties of your office?

A. To determine the figures.

Q. How do you know he did? Did you remember when he did? A. Some one under his direction.

Q. How do you know? A. I don't know.

Q. You don't know, do you?

A. It was the only manner we could—

Q. Did you ever hear of this letter of February 24, 1942, in which the cost of the Aberdeen substation facilities appears before today? A. I don't recall.

Q. Never heard of it? A. I don't recall.

Q. Did you ever hear the figure, $60,479.00 as the cost of that substation? A. I don't recall.

Q. Did you ever hear the total figure of $303,449.26 as the total cost of those facilities before today?

A. I don't remember.

Q. Never did? A. I don't remember.

Q. You are secretary and director and auditor of the company and the man who signs for the company the contract which appears in Exhibit 22. Is that right?

A. I signed it, yes.

Q. When you signed it, did you know what you were representing, or did you care about the truth of what you were representing, in this Exhibit 22? Which is a contract? A. I presume at the time I did.

Q. You think you might have known it at the time?

A. I don't know for sure.

Q. Assuming you did know it at the time, where did you get your information or your knowledge?

A. That figure was determined by someone else. It must have been, because there is no such figures in our records.

Q. No such figures at all?

A. They are in the records but they have to be allocated.

Q. Did you ask anybody before you signed it if those were right figures, or if you were under-charging or over-charging in order to collect this $20,000 a year?

A. I don't recall.

Q. Were you concerned with what the total cost of the interconnection facilities was? A. I must have been.

Q. If you were concerned with it, haven't you some dim recollection of hunting up those figures or inquiring about those figures? A. I did not prepare the figures.

Q. I didn't ask you if you prepared them. I said, weren't you concerned as to the source of those figures?

Q. Does that contain that letter? A. No, This is item 26.

Q. Where is the letter we asked you for which you said, under 25, you had?

Mr. Woods: This is the one I answered about.

Mr. Fellows: You are not on the witness stand. When I want to examine you I will have you sworn.

Q. Where is that letter I asked you for and you said you had? A. I didn't have this one. I had this one in 26.

Q. Do you have with you a letter from Strike to Mills, dated January 10, 1935, or a carbon copy?

A. I do not have it.

Q. Did you hunt for that letter? A. I did.

Q. Did you find it? A. I did not find it.

Q. Where did you hunt? A. I hunted in the files.

Q. Did you hunt in the files where it would naturally be filed and where those files were kept? A. Yes.

Q. All right. Do you have with you, then, a copy of a letter or communication from Mills to Strike, dated January 11, 1935? A. I could not locate it.

Q. Entitled "Subject: Management UPU properties." Did you find that one? A. I did not find that.

Q. Where did you hunt for it? A. In the file.

Q. In the same files where these things are always kept?

A. That is right.

Q. Did you make inquiries from any persons who might know where they were probably mislaid? A. I think I did.

Q. Did they make a search? A. Yes.

Q. A thorough search? A. Yes.

Q. Every place where you thought possibly they might be? A. That is right.

Q. And they can't be found?

A. They could not be found.

Q. Do you state now, to your best judgment, they are lost? A. I would think they would be.

Q. Do you remember or have any independent recollection of the existence of those letters at some time or another? A. No.

Q. Do you have a copy of a form by George A. Mills to Mr. Green which was attached to the letter which I last asked you about, which you said you could not find?

A. I haven't it.

Q. Did you make the same kind of a search for that? A. I did.

Q. Did you find any whether it was attached or unattached to the letter? A. I could not find any.

Q. It was the identical kind of search? A. That is right.

Q. So far as items in 25 are concerned, you have not produced here any of those communications, for the reason, you state, they cannot be found? A. That is right.

Q. After thorough search? A. That is right.

The witness Buckmier produced Plaintiff's Exhibit 53 from the records of the defendant. He testified that said exhibit was a part of the records of the engineering department.

Plaintiff's Exhibit 52 and Plaintiff's Exhibit 65 are the Sargent & Lundy Report and are identical and Plaintiff's Exhibit 65 was received in evidence.

Plaintiff's Exhibit 53 was received in evidence and is a collection of load diagrams dated August 21, 1937, December 21, 1937, July 16, 1938, December 6, 1938, December 20, 1938, July 29, 1939, December 19, 1939, July 9, 1940, December 18, 1940, August 5, 1941, December 22, 1941, December 21, 1942, December 22, 1943, December 20, 1944, December 21, 1944, December 19, 1945.

Up to and including July 9, 1940, they are entitled "Interconnected System North and South Dakota N. D. P. & L. Co.-N. P. & L. Co.-N. W. P. S. Co., showing locations of generating stations, transmission lines and 'junction towns'". Subsequent to that date they are entitled "Interconnected System North and South Dakota, Dakota Public Service Co. and N. W. Public Service Co., showing locations of generating stations, transmission lines, junction towns, etc."

Q. Can you tell me who had supervision of the load dispatchers? A. No, I haven't any knowledge of that.

Q. Who paid their salaries?

A. The joint management office paid their salaries.

Now, therefore, it is ordered:

That the persons named in said Exhibit "A" be and they are hereby severally authorized to hold the positions for which authorization has been sought as aforesaid in corporations within the purview of said section 305 (b) of the Federal Power Act, subject to the specific reservation of the right of the Commission to require any or all of said persons to make further showing that neither public nor private interests will be adversely affected thereby, and to make any other or further order or orders in respect of any or all said applications.

Exhibit "A."

Docket No.	Name	Address
ID-283	Buckmier, Joseph Frank	Huron, South Dakota
ID-586	Sandstedt, Carl Laurence	Huron, South Dakota
ID-628	Strike, Clifford John	Huron, South Dakota

Defendant's Exhibit 201 consists of a certified copy of the order of FPC entered February 18, 1936, authorizing Frank E. Kreusi to hold the positions for which authorization had been sought, and otherwise conforms to Defendant's Exhibit 204.

Q. You don't know who they reported to? A. No.

Q. Do you know the date when the records of North Dakota Power & Light, and Northern Power and Light were moved to the office of the defendant at Huron? Was that in 1929?

A. I think it was 1929 or first part of 1930.

Q. From that time on the records of these northern companies were all kept in the defendant's office in Huron, were they not?

A. There were some records kept out in the division offices.

Q. What was the nature of those records kept out in the division offices?

A. The detailed accounts receivable. Storage records.

Q. They were not primary records? They were working records that were finally assembled in the permanent records, weren't they? A. Yes.

Q. What I am referring to is the general records of the North Dakota companies was kept in your office? A. Yes.

Mr. Fellows: That is all.

By Mr. Royhl:

Q. When you say your office, do you mean the joint company office? A. The joint management office.

Q. All four of these companies? A. That is right.

Q. That included the defendant, did it?

A. That included the defendant.

Q. Did that also include Northern Power & Light Co. while it was in existence? A. It did.

Q. And the North Dakota Power & Light Co.? A. Yes.

Q. And later the merged company, Dakota Public Service Co.? A. Yes.

Q. And this joint management, did it also include the Knife River Coal Mining Co.? A. Yes.

Mr. Benson: That is objected to as immaterial. There is no issue of the Knife River Coal Mining Co.

Mr. Fellows: Objected to for the further reason we called this witness for cross examination.

The Court: There is an answer in the record, let it stand.

Defendant's Exhibit 203 consists of a certified copy of the order of FPC dated March 21, 1939, and is as follows:

Defendant's Exhibit 203.

Federal Power Commission.

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, concurring. John W. Scott, dissenting.

March 21, 1939.

In the Matter of Joseph F. Buckmier. } Docket No. ID-283.

Authorization Pursuant to Section 305 (b) of Federal Power Act.

Upon supplemental application of Joseph F. Buckmier, National Bank of Huron Building, Huron, South Dakota, filed January 23, 1939, and amendment thereto filed February 16, 1939, pursuant to Section 305 (b) of the Federal Power Act, for authorization to hold the following positions:

Secretary	Northwestern Public Service Company.
Secretary, Director	Northern Power and Light Company.
Secretary, Director	North Dakota Power and Light Company.

which application supplements his original application filed October 25, 1935, for authorization to hold the following positions:

Auditor, Director	Northwestern Public Service Company.
Auditor	Northern Power and Light Company.
Auditor	North Dakota Power and Light Company.

and upon which application filed October 25, 1935, authorization was granted by the Commission's order of February 18, 1936;

By Mr. Royhl:

Q. Does your office or your duties entail anything concerning the engineering records of these joint companies?

A. They do not.

Q. What department has charge of those?

A. It is what we call the engineering department.

Q. Does that include both transmission and power?

A. Yes.

Q. Who has charge of that department?

A. The transmission and distribution department are in charge of Mr. Sickle.

Q. How about the power?

A. The production department is in charge of Mr. Stokke.

Q. And they were subpoenaed with demands, were they, generally, with you? A. Yes.

Q. Also the subpoena was served upon the president of the company? A. Yes.

Q. I think you have told counsel that you have used your best effort to obtain compliance with the subpoena?

A. I have.

Q. But there were some matters that were not in your department? A. That is right.

Q. Did you, at the time of the service of these subpoenas upon you, and the other persons who were served, did you have a conference concerning the gathering of these various items and exhibits and records?

A. Yes, we did. I had a conference with the assistant secretary of the company, Mr. Mauck.

Q. In that way did you work through the various departments in obtaining these various matters demanded?

A. Yes. I assumed responsibility for the accounting department. Mr. Mauck assumed the responsibility to assemble all of the other records from the different departments involved.

Q. What position did C. L. Sandstedt hold with the defendant company? A. He was vice president, and treasurer.

Q. What position did he hold with the North Dakota and Northern companies? A. He held the same position.

Q. And Dakota Public Service Co.? A. That is right.

Q. Prior to his being vice president and treasurer, what office did he hold?

The Commission, having considered said application, upon the information therein contained and other information in relation thereto furnished by the applicant, finds that:

Applicant has made due showing in the form and manner prescribed by this Commission that neither public nor private interests will be adversely affected by his holding the following positions, pending the further order of the Commission in regard thereto:

Secretary, Auditor, and Director	Northwestern Public Service Company.
Secretary, Auditor, and Director	Northern Power and Light Company.
Secretary, Auditor, and Director	North Dakota Power and Light Company.

And the Commission orders that:

(A) Until further order of the Commission, said applicant be and he is hereby authorized to hold the positions described in the above finding, subject to the provisions of Part 45 of the Rules of Practice and Regulations of the Commission, and to the specific reservation of the right of the Commission to require said applicant to make further showing that neither public nor private interests will be adversely affected by his holding of said positions;

(B) All orders heretofore made authorizing applicant to hold positions pursuant to Section 305 (b) of the Federal Power Act be and the same are hereby superseded.

By the Commission.

LEON M. FUQUAY,
Secretary.

Defendant's Exhibits 205, 208 and 209 consist of certified copies of orders dated March 21, 1939, of FPC au-

A. He was secretary and treasurer, and before that he was general auditor.

Q. You say you are now general auditor?

A. I am now general auditor.

Q. You succeeded him? A. That is right.

Q. What duties did Mr. Sandstedt handle during the time of these correspondence or papers that were exhibited to you?

A. Among his duties was the rate. He had charge of the rate department.

Q. Who handled those rates before the Federal Power Commission for that company during the time covered by this litigation? A. Mr. Sandstedt.

Q. He is dead now, is he? A. That is right.

Q. When did he die?

A. He passed on, I believe, in June, 1944.

Q. Up until the time Mr. Sanborn became president of the defendant company, who was president of the company? A. Mr. Strike.

Q. Is he dead, too? A. He just passed on, Wednesday.

Q. Who was chief financial officer of the defendant company? A. Mr. Sandstedt.

Q. Mr. Sandstedt was an accountant, was he?

A. Yes, he was.

Q. Was he an engineer? A. No.

All of the records of every kind and nature produced by defendant in court pursuant to various subpoenas or otherwise were designated as Plaintiff's Exhibit 55, without further specific marking or identification as to each document, and were offered in evidence. Such mass of records and documents was received in evidence, with the understanding that any reference to any particular document or instrument included in the offer would require a further and more detailed identification of the same.

The examination of Mr. Buckmier continued.

By Mr. Fellows:

Q. Are Exhibits 55-1 and 55-2 joint management contracts for the years 1936 and 1939 respectively?

A. Yes, they are.

The foregoing Plaintiff's Exhibits 55-1 and 55-2, received in evidence, are respectively Exhibits G and H to the Complaint as amended (R. pp. 178 and 182, supra).

Q. The name J. B. Buckmier that appears on these documents is your signature, isn't it? That appears on 55-2, is your signature?

A. Yes. The signature on 55-2 is my signature.

Q. Can you turn to Exhibit 55 and find the information about who were the officers of the defendant corporation on the 6th day of August, 1929? Are you able to tell who the directors were on the 6th day of August, 1929. A. Yes.

Q. Will you state who they were?

A. The directors that were elected at the annual stockholders meeting on March 26, 1929, were Martin J. Insull, T. T. Parker, F. E. Kruesi, P. F. Burritt, C. W. Amidon, C. J. Strike, W. H. H. Frost, C. L. Sandstedt, O. C. Stokke.

Q. Can you find anything in the records of who the officers were on that date?

A. I haven't been able to locate the meeting.

Plaintiff's Exhibit 52 was received in evidence.

O. C. STOKKE was called as an adverse witness and sworn and testified as follows:

Cross-Examination, by Mr. Fellows.

Mr. Royhl: We object to this man being called as an adverse witness. He is neither officer nor director.

Mr. Fellows: Let's find out what he is.

Q. Your name is O. E. Stokke? A. O. C. Stokke.

Q. Where do you live? A. Huron, South Dakota.

Q. Your occupation? A. Superintendent of production.

Mr. Fellows: Your Honor, that brings him under the rule.

Q. You are superintendent of production of the defendand corporation? A. Northwestern Public Service Co.

Q. And have been for a long period of time? A. Yes.

thorizing Glenne R. McArthur to hold the positions of vice president and director of defendant, Northern Power and Light Company and North Dakota Power & Light Company; authorizing Albert B. Sanborn to hold the positions of president and director of defendant, Northern Power and Light Company and North Dakota Power & Light Company; and authorizing Ernest W. Dempewolf to hold the positions of assistant secretary and assistant treasurer of defendant, Northern Power and Light Company and North Dakota Power & Light Company, and otherwise conform to Defendant's Exhibit 203.

Defendant's Exhibit 202 consists of a certified copy of the order of FPC dated May 2, 1939, authorizing Carl L. Sandstedt to hold the positions of vice president, treasurer and director of defendant, Northern Power and Light Company and North Dakota Power & Light Company and otherwise conforms to Defendant's Exhibit 203.

Defendant's Exhibit 207 consists of a certified copy of the order of FPC dated July 14, 1936 authorizing William McKinley Dunn to hold the positions of assistant secretary and assistant treasurer of defendant, North Dakota Power & Light Company and Northern Power and Light Company, and otherwise conforms to Defendant's Exhibit 203.

Defendant's Exhibit 211 consists of a certified copy of the order of FPC dated March 3, 1942, authorizing Ralph E. Mauch to hold the positions of assistant secretary and assistant treasurer of defendant and Dakota Public Service Company, and otherwise conforms to Defendant's Exhibit 203.

Defendant's Exhibit 210 consists of a certified copy of the order of the FPC dated December 5, 1944, authorizing

Margaret Frost to hold the positions of assistant secretary and assistant treasurer of defendant and Dakota Public Service Company, and otherwise conforms to Defendant's Exhibit 203.

Defendant's Exhibit 206 consists of a certified copy of the order of FPC dated December 5, 1944, authorizing William McKinley Dunn to hold the positions of assistant secretary and assistant treasurer of defendant, North Dakota Power & Light Company and Northern Power and Light Company, and conforms to Defendant's Exhibit 203.

Mr. Fellows: We will call Mr. J. F. Buckmier as an adverse witness.

J. F. BUCKMIER, being called as an adverse witness by the plaintiff and being sworn, testified as follows:

Cross Examination, by Mr. Fellows.

Q. Mr. Buckmier, are you an officer of the defendant company? A. I am.

Q. What officer? A. I am secretary and general auditor.

Q. How long have you been secretary and general auditor?

A. I have been general auditor since 1927. And secretary since 1938.

Q. Have you been a director of the company all of that time? A. No. Since 1933.

Q. You have been a director since and you are now?

A. That is right.

Q. There was served upon you a subpoena for the production of some records. I am going to ask you to take these one at a time, if you have them here, and have you produce them. Do you have with you your copy of the subpoena? A. I have.

Q. Have you brought with you all of the accounting records of accounts between the Northwestern Public Service Company and the law firm of Martens & Goldsmith, for the years 1930 to 1945, both inclusive, showing the payments of fees and expenses by your company to them?

A. I have.

Q. Will you place those up there?

A. I have item 2 and 3 in the same envelope.

Q. Does this envelope also contain accounts and records between your company and Goldsmith, between 1930 and 1945, showing payments of fees and expenses?

A. That is right.

Q. Mr. Buckmier, do your records show a breakdown of the separate substations, notably the Aberdeen interconnected substation and control equipment used for interconnection with Northern Power & Light Co. and Dakota Public Service Co.? Do you have the breakdown between these things? A. In one accounting number?

Q. Where do you have those?

A. I don't have any record of it.

Q. You know as a fact, in your reports, you are required to make a breakdown, and you have shown a breakdown of those things, don't you?

A. Which reports are you referring to?

Q. Mr. Buckmier, you know as auditor and officer of this company that you made a specific charge wherein the cost of that Aberdeen substation and transmission line was broken down, don't you? A. That is not broken down.

Q. Didn't you make a separate charge against us for that cost, and if you did, where did you get the figures? When I refer to "us" I refer to Northern Power & Light Co.

Q. You know Northwestern Public Service Co. made a charge to us for that? A. Yes, I know that.

Q. Where did you get the figures for that charge, separate from any other charge?

A. The charges was this $20,000.00 a year for rental. There was no figure involved in that.

Q. Will you state who Mr. C. L. Sandstedt was in your company in February, 1942?

A. He was vice president and treasurer of the company.

Q. Vice president and treasurer up there at Huron?

A. That is right.

Q. Do you know his signature when you see it?

A. I think so.

Q. Look at the signature on that letter of February 24, 1942, in Exhibit 34, on the photographic copy, and state

whether or not the signature above the typewritten words, "Vice President and Treasurer" is C. L. Sandstedt's, you just referred to. That is his signature, isn't it?

A. I think it is.

Q. You were working under him at that time? A. Yes.

Q. Examine this letter, which is in Exhibit 34, and state whether or not you recognize that as having been sent from your office, and being a letter of which there is a copy in your office?

A. Yes, this must have come from our office.

Q. That is a copy of a letter sent from your office?

A. Yes.

Q. On your stationery? A. That is right.

Q. Turn to the second page of that letter and under Item 3, the paragraph which is denominated "following is original cost of these facilities" and going down to where it says, "Substation facilities, Aberdeen, South Dakota, cost $60,479.48." Have you found that place?

A. Yes.

Q. Where did those figures come from if you didn't have a breakdown?

A. I have no knowledge where they came from.

Q. Can you make a guess? A. I didn't prepare this.

Q. It was prepared from records in your department, as auditor, wasn't it? A. I don't recall.

Q. Can you tell the Court from what other source, outside of your department, they could have possibly gotten those figures, if there were such figures in existence?

A. These could have been made by an engineer.

Q. What engineer could have made those figures to begin with? A. I would not know.

Q. Assuming an engineer made those figures, where would he have them, except in your department?

A. Well, that is what we have here. We have the records here.

Q. Do you mean to say that letter came from the engineering department of your company? A. The breakdown.

Q. Answer the question. Did that letter come from the engineering department of your company?

A. No, it did not.

Q. Doesn't it contain matters which are peculiarly in your department and shown by the records in your department? A. We have no such breakdown.

Q. You haven't any such figures as that at all in any of your records? A. No breaking down in this manner.

Q. Under the requirements for production, in Paragraph 15, you stated you didn't have these items and they had not been separated in your office at all, didn't you?

A. What are you referring to?

Q. I am talking about the cost of the Aberdeen substation interconnection facilities?

A. They can be broken down, I presume.

Q. Didn't you testify before I got this out that in those records which you were asked to produce under Paragraph 15 of your subpoena, that you had never had a breakdown of them in your office? A. That is right, no breakdown.

Q. If you had never had a breakdown of them in your office will you explain, if you can, where your company, over the signature of C. L. Sandstedt, got figures of this kind from which they were able to put the cost of the Aberdeen substation in their report of February 24, 1942, to the Federal Power Commission, Washington, D. C., the substation at Aberdeen cost $60,479.48?

A. They could be obtained from these records we had here by analysis.

Q. Let me find out if you can tell me something else. Examine this Exhibit 22 here. You will find supplemental agreement dated March 13, 1943. Do you see that?

A. Yes.

Q. You signed that as secretary, didn't you? A. I did.

Q. Who signed as president or vice president?

A. Sanborn and Sandstedt.

Q. You are familiar with this instrument? A. Yes.

Q. That is the contract whereby you were collecting for interconnection facilities at the rate of $1666.66 a month, from Northern Power & Light Co.? A. That is right.

Q. And in that contract in this exhibit which I just showed you, you state, don't you, or represent, that one half of the cost of those facilities was $151,724.68?

A. Yes.

Q. And that is just half of the cost. That is what you represent in there, isn't it? A. Yes.

Q. Just multiply that half of the cost by two and tell the Court whether or not the answer is not this $303,449.26, which is the total of the items including what you repre-

A. I don't recall.

Q. Haven't the slightest recollection of having asked anybody? A. I don't remember.

Q. As an officer of this company then and now, do you know anything about the truth of any of those figures that go to make up the $303,000? A. I don't know.

Q. By the way, Mr. Buckmier, when you signed this contract which appears in our Exhibit 22, dated March 13, 1943, between Northwestern Public Service Company, the defendant, and the Dakota Public Service Company, you were auditor also, were you not, and an officer and director of the other contracting party, Dakota Public Service Co.?

A. What date was that?

Q. March 13, 1943? A. Yes, I was.

Q. So when you signed this exhibit, you purport to have signed it as secretary of the defendant company in this action, didn't you? A. No.

Q. Who did you sign for?

A. I signed for Northwestern Public Service Co.

Q. That is what I say, for the defendant in this action?

A. Yes.

Q. And when you signed it, what officer were you in the Dakota Public Service Co., that was the other part to that contract that was agreeing to pay $20,000.00 a year as amortized cost of these interconnection facilities that amounted to $303,000? What officer were you in that other company?

A. I believe I was secretary and auditor for that company.

Q. And director? A. As I recall.

Q. Practically the same officer? A. I think so.

Q. When you were dealing for Northwestern Public Service Co., and when you were also dealing in that same contract for the Dakota Public Service Co., do you mean to say that you signed an agreement that obligated the return or payment to defendant company in this action of over $150,000 without having any knowledge of the truth of the amount upon which those payments were to be based, or didn't you care? A. I presume I must have.

Q. If you cared why didn't you make some inquiry or search to find out the truth of the [times] that made the $303,000? A. Someone else had done that.

Q. You were secretary of the company?

A. That is right.

Q. You were signatory to the contract? A. That is right.

Q. By the way, that is not the only contract that fixes those figures, is it? There was some other of which this is just a supplemental one? Isn't that right?

A. I think there was.

Q. You were working physically, you were down here at the Huron office of the defendant company in this case, at the time that was signed, weren't you? A. Yes.

Q. And the records, if there were any records, that go to make up those amounts, were in the Huron office, weren't they? A. Yes, they were.

Q. Who were you representing when you signed that contract, or who do you think you were representing?

A. I was representing the joint management.

Q. Representing the joint management, you were getting money, pulling money out of the northern company to the Huron company, the defendant here, for half of the claimed $303,000 interconnection costs? A. That must be right.

Q. Didn't you feel some duty on your part to represent, in those contracts, negotiations, and in the contract, the Dakota Public Service Co. up there in North Dakota, especially in regard to whether or not the figures that were to be and had been paid were correct?

A. I must have assumed they were correct at the time.

Q. Didn't you feel obligation enough to the company in North Dakota to check and see, well, maybe those figures are only half that; maybe they don't amount to anything; or just didn't you care?

A. I at the time was satisfied that was the figures.

Q. From what were you satisfied? You say you made no inquiry, you made no search of the records. From what were you satisfied?

A. I was satisfied from the basis of the allocation that was made.

Q. What allocation?

A. On the Aberdeen and all of the ones we have just been discussing.

Q. You were just satisfied with the figures as they appeared in that report? A. I had confidence.

Q. Did you have anything to base any satisfaction with

those figures on or not? You didn't care what figures were shown in that contract, did you? A. I didn't say that.

Q. You would not say you did, would you?

A. I certainly would not have signed it if I had not felt it was just.

Q. Where did you get that feeling?

A. From the party that determined the figure.

Q. You were the auditor and secretary of both companies to that contract, weren't you? A. That is right.

Q. And a signer of the contract?

A. Signer as secretary.

Q. Yes. And still in fulfilling your obligation to both companies you didn't check the accuracy of those figures at all, and you permitted them to go into a report and also into the contracts as being the contract price. Didn't you now? Yes or no. A. I was satisfied they were correct.

Q. I didn't ask you that question. I said you were willing without any further inquiry or search or anything else, in the discharge of your obligation to both companies, to allow those figures to go in without any inquiry or search or any information of any kind? A. I was satisfied.

Q. That doesn't answer my question. I said, you were willing to do it. Were you?

A. At the time I must have been satisfied that was correct.

Q. How long ago was that made? 1943, wasn't it?

A. The date of the contract.

Q. Now, I want a carbon copy of your company's letter, by C. J. Strike, to Mills, entitled "Joint Office Payroll and Expense Allocation" dated July 10, 1935.

Mr. Woods: If Your Honor please, I would like to make a statement in connection with this that perhaps should have been made a little earlier. Counsel will have to take some of the responsibility for the fact this witness can't identify every exhibit, does not know about everything, whether it is in his department or not. I think everything that has been requested has been produced here, or we are now producing it here. The witness may not know about that.

Mr. Fellows: Let's find out about that.

The Court: If the witness doesn't know he can't tell. Let counsel continue the examination.

Q. When I was so rudely interrupted, I was asking you to produce a letter from Mr. Strike to Mr. Mills.

Mr. Royhl: That was just presented to you.

Q. Have you the one from Mills to Strike, January 11, 1935? A. I could not find that one.

Q. Did you look in all of the files where that letter would normally be kept? A. I think I did.

Q. Did you go through the files that would contain that in the ordinary course of business?

A. That is as I remember it.

Q. Did you make a thorough search? A. Yes.

Q. You think it can't possibly be found in your office?

A. That is right.

Q. Now, under 26, do you have a copy of a letter, dated February 24, 1942, written by Sandstedt to the Federal Power Commission? A. I have.

Q. You have that? A. Yes.

Mr. Benson: I think there is an error in the statement of counsel, Mr. Woods was producing item 25 in the subpoena to the witness now on the stand. We would like to find out whether counsel now is not in error when he says he is producing a carbon copy of a letter C. J. Strike to George A. Mills, entitled "Joint Office Payroll and Expense Allocation," dated January 10, 1935. We asked for the carbon copy.

Mr. Stafford: There is no such copy found.

Mr. Fellows: He testified he had it here.

Mr. Woods: We thought we did have it here. I will tell you what we did have. We have a letter, or what purports to be a carbon copy of a letter, dated January 14, 1935.

Mr. Fellows: That is not the letter we asked for at all.

Q. You testified you had here, you reached down and got out a letter or carbon copy of a letter written by C. J. Strike to George A. Mills, dated January 10, 1935, entitled "Joint Office Payroll and Expense Allocation." Have you that letter? A. No, This is what I presented.

Q. You were at one time an officer of the company, were you not? A. Not an officer.

Q. Were you a director? A. A director.

Q. During what period of time?

A. I can't remember the exact dates, but it was back in the early '30's. Possibly from '29 to '32, '33. I am not sure.

Q. You were elected in 1929 as a director of the defendant company, were you not?

A. I would assume so from what I heard this morning of the reading of the minutes.

Q. For how many years did you continue to be a director? A. I believe until '32 or '33. I am not sure.

Q. After that you were not again a director?

A. I was again elected director in 1939.

Q. Up until what time? A. 1945.

Q. You ceased to be a director in 1945?

A. If I remember correctly it was 1945. Pardon me, I believe it was 1946.

Q. Were you an officer during any of that time, from 1939 on? A. No, sir.

Q. You were superintendent of production?

A. Superintendent of production.

Q. Were you also connected with Dakota Public Service Co. in some capacity, during that period of time, or all of it? A. As superintendent of production.

Q. And as director, too, for part of the time, weren't you? A. Not the North Dakota Power and Light Co.

Q. I said the Dakota Public Service Co. For part of that time were you director of Dakota Public Service Co.?

A. No, sir.

Q. Were you of the Northern Power and Light or North Dakota Power and Light? A. No, sir.

Q. Did you serve those companies as superintendent of production? A. Yes.

Q. During what period, or was it during the same period you served the defendant corporation?

A. Superintendent of production from early 1935 up until the date—

Q. I believe Exhibit 53 has been testified to by Mr. Buckmeir as a general load diagram for all of the years

enumerated in the writing on the cover of it. He states there are two of them missing, namely one of December 15, 1941, and one of January 7, 1942. Do you know where those other two load diagrams are?

A. If there was load diagrams for those dates you have just mentioned—In all probability there was no load reading taken on those particular dates.

Q. Your reports to the Federal Power Commission indicate there were. Have you made any search for any that were called for by your subpoena which are not contained in that folder? A. I searched for the load diagrams.

Q. And that is all you found? A. That is all I found.

Q. And these load diagrams were scattered in some of the different stations?

A. No. These copies I had in my general office file.

Q. How do you account for the absence of the two you have mentioned?

A. I can answer that better by explanation.

Q. All right.

A. These load diagrams were prepared from special readings that I and the engineering department had been taking for all of the years I was connected with the production department. They were taken for this reason, we wanted to get some idea from an operating standpoint, from a load condition standpoint, on the system, capacities of plants, etc., some idea of what the peak condition was on the system with respect to transmission of load and coincident peak demands on the combined systems of the three companies. The selected dates were generally taken during a peak summer load to get the actual conditions of maximum demands on the system, interconnected systems of the three companies. They were also taken during the annual peak which usually occurred in the month of December of each year.

Q. Without continuing why they were taken, what records have you which show your December 15, 1941 reading, or whether or not a reading was taken at that time?

A. December 15th?

Q. 1941?

Mr. Royhl: You can open that up and see what is in there.

A. There isn't a load diagram in here for December 15th.

Q. Does the absence of a load diagram in this exhibit, for December 15, 1941, indicate that none was taken on that date?

A. No readings were taken on that date for this load diagram.

Q. So there wasn't any taken on that date?

A. That is right.

Q. How about January 7, 1942? Can you find one for that date? A. There isn't anything here for that date.

Q. The absence of those two would cause you to state that no readings were taken on those two dates?

A. No fifteen minute readings.

Q. Yes. A. That is right.

Q. Were there any thirty minute readings taken on that date? A. No.

Q. Any hourly readings taken on those dates? A. Yes.

Q. Where is your evidence that indicates any hourly readings were taken?

A. The hourly readings are taken every hour at every station.

Q. Will you produce some evidence on your books that show hourly readings on December 15, 1941?

A. I would have to get that information from the load dispatcher's daily log readings.

Q. Those are the hourly readings taken for those dates?

A. Yes.

Q. Do you have some independent recollection of those dates? A. Yes, I do.

Q. You mentioned effective capacity. Will you explain that?

A. Effective capacity is what I would define or use for determination as the capability of continuous operation of that particular station. The combined units in the station. For example, [Buelah], 6200.

Q. That is on 24 hour basis?

A. That is KW capacity any hour of the 24.

A. To begin with, fifteen minute readings were taken at all metering points. For example, at all of the power stations where there were circuits feeding a local city line.

For example, [Buelah], 320 KWH, Dickinson, 1000. That was the load at the city of Dickinson at this particular moment. All of those known readings were used to establish specific locations where that load was needed. Then the hours that were left over, transmitted out on the transmission line, the known flow of power from these stations outside of these stations all were marked. The known left-over kilowatt hours was distributed by the load dispatcher on allocation basis of what the known load is in those particular areas.

Q. Why was it done that way?

A. To give our engineers in the engineering department and others entitled to it, what the approximate load conditions were in these various sections during the coincident peak hour demands on the system.

Q. There were points where there were no meters, wasn't there? Where it was not metered? A. Oh, yes.

Q. Refer to some of those points where you show figures.

A. Let's take, for example, at the connection, west line connection from Northwestern Public Service Co. to the line of the Dakota Public Service Co., or Northern, at Ipswich.

Q. There was no meter there?

A. There was no meter there.

Q. How did you arrive at the figures you placed there?

A. The total power flow was out of Bismarck, was out of Mobridge, or north out of Barnard or west out of Aberdeen, the total power flow was distributed on allocation basis as I mentioned by the load dispatcher, divided up through these areas in direct proportion possible to, on the known demand of those areas. In other words, readings were taken by the division superintendent two or three times a year at what the peak demands were at these particular points. In other words, that is estimated from the power generated.

Q. That is estimated where there are no meters?

A. That is right.

Q. Who made these meter readings? The load dispatchers?

A. No. The meter readings were made on special forms submitted to different power plants, chief engineers and operators. For the generation at those stations.

Q. Now, there is some more stuff on here. The green figures between stations are the estimate—

A. Estimated fifteen minute peak demands during this total system.

Q. On that date. A. Yes, as tabulated on there.

Q. That tabulation down below purports to be a tabulation of all of these figures?

A. Yes, all of these figures in here.

Q. Of the thirty and sixty minute coincident—

A. With the same allocation.

Q. Arrived at the same way?

A. Arrived at in the same way although they are not spread out here.

Q. Who had supervision of the load dispatchers?

A. The load dispatchers are part of the engineering department. They are employees of the general office engineering department.

Q. Were they under your supervision?

A. Directly with respect to generation or loading of plants.

Q. Who did they take orders from? From you?

A. Instructions orders?

Q. Yes?

A. Such instructions or orders as they would require in order to function on their jobs, yes.

Q. Who did they make their reports to? To you? Did they make their reports to you?

A. I am not sure just what particular reports you are referring to.

Q. Tell the Court the duty of your dispatchers.

A. The load dispatcher's duty with respect to production, my department, is the dispatching of power loads of the respective stations of the power pool companies, the three companies or the two companies.

Q. What is the dispatching of loads? You are not very specific. What do they have a load dispatcher there for?

A. Maybe I can better answer that in this manner. That during every minute, so to speak, or every fifteen minutes or every hour of the day, or every period of the day, there is variation of load on the system from the so-called peak load of the day, in the evening or whichever part of the day it occurred, on throughout the day. The dispatching

office is situated at a location on the system where the load dispatchers are acquainted with the load conditions on the system, and they are also in touch with the various power plants at every hour of the day and know what those particular plants are carrying in load.

Q. Do these dispatchers keep some kind of a record?

A. Yes, they keep a log record.

Q. About how do they keep those log records? Where do they finally end up? In your office?

A. They are kept there at the dispatching office.

Q. You were subpoenaed to bring in some records, including Aberdeen station record. Have you got those, for 1930? A. Station log sheets of the Aberdeen power station?

Q. Yes. I would like to have you pull up the one for 1930. A. For the year 1930?

Q. Yes.

A. I do not have the station logs for the year of 1930 for Aberdeen power station.

Q. Where are they?

A. They have likely been disposed of. They were not kept.

Q. For what years do you have them here?

A. I have them for the years 1937 to 1945, inclusive.

Q. Do you know that they have been destroyed or put beyond your reach? A. Those prior to 1937?

Q. Yes. A. Yes, they have been destroyed.

Q. How do you know that?

A. The fact that they were not at the power station. They have been destroyed and the chief engineer so advised me.

Q. Is it your custom to destroy those after a certain period of time?

A. The custom has been to keep them three or four years, but in the last few years we have endeavored to keep them for a period of six years.

Q. Look at the first paragraph of your subpoena. Did you produce the accounting studies and the engineering studies made by the defendant company or furnished to it by Middle West Utilities, or Middle West Service, or Middle West Corporation, showing the studies made to determine that North Dakota Power and Light should

sell energy to Northern Power and Light at a rate of three and one-half mills per KWH?

A. I have furnished such engineering studies as I could locate in the files.

Q. Let's get those out. You might read Paragraphs 2 and 3 and you could get them all together. Do you have now in your hand the accounting and engineering studies made by the defendant company or furnished to it by Middle West Utilities, or Middle West Service or Middle West corporation, or the Receiver of Middle West Utilities, showing studies made to determine North Dakota Power and Light should sell energy to Northern Power and Light at the rate of 3.5 mills per KWH?

A. Engineering studies only.

Q. Do you have any accounting studies in addition to them? A. No.

Q. Just engineering? A. Just engineering.

Q. What years do those cover?

A. They are dated April, 1935, December, 1935, December, 1935, and July, 1936.

Q. That is all there are in your records at the office?

A. Yes.

Q. Are there any that are missing from there?

A. I don't recall any others.

Q. To your best recollection this is all you ever had?

A. That is all I can recall.

Plaintiff's Exhibit 55-3 was received in evidence and consists of four engineering studies made by the witness Otto Stokke, each addressed to C. J. Strike, and dated April 8, 1935, December 31, 1935, December 31, 1935, and July 14, 1936, respectively, which studies are summarized as follows:

Study Dated April 8, 1935:

The purpose of the study is stated to be to arrive at an equitable Rate Schedule for power to and between the three affiliated companies (North Dakota Power & Light Company, Northern Power and Light Company and defendant). It involves an analysis and study of the interconnected system of transmission hilines and power plants regarding plant capacities, incremental production costs, line losses, hourly kilowatt demands throughout the day

and night, and seasonal conditions of operations in plants and on the transmission lines, as viewed from "*practical* operating conditions, or experiences," and omitting any assumed or technical phases of performance.

The normal plant kilowatt capacities and peak kilowatt-hour demands of each of the three companies (based on December, 1934, figures), "which would be the situation if each company were entirely isolated," are summarized as follows:

1) North Dakota Power & Light Company—had approximately 7900 KW of regular normal plant generating capacity, a system peak hourly load of approximately 4600 KWH, leaving available an excess plant capacity of approximately 3300 KW;

2) Northern Power and Light Company—had available approximately 1800 KW of regular normal plant generating capacity, and a peak hourly load of approximately 3400 KWH, leaving a shortage of approximately 1600 KW of generating capacity. In order to have adequate reserve, it would need about 3,000 KW of generating capacity at one or more locations;

3) Defendant—had available approximately 15,800 KW of regular plant generating capacity, and a peak hourly load in South Dakota of approximately 11,000 KWH, leaving an excess of approximately 4,800 KW of generating capacity; there being, therefore, no need for defendant to purchase power from outside companies because its generating capacity was adequate for its own requirements.

Regarding the generating plants of these three companies, it was stated that:

1. North Dakota Power & Light Company—

With both turbines operating at Beulah and the steam-heat by product generation at Bismarck, Mandan and Dickinson, there was 1500 to 2500 KW of hourly excess capacity, a large part of which was then being transferred to Northern Power and Light Company, which "comprises 'low' incremental cost kilowatts, or dump power", available for sale to Northern Power and Light Company or

defendant at a low rate per KWH. It was further stated in this connection that the generation at Bismarck was considered as being all delivered to the town of Bismarck or to the own use of North Dakota Power & Light Company; the Mandan plant could be considered only for emergency purposes and as applying only to the local requirements of Mandan; the plants at Mott and Dickinson could be considered only for standby service in the event of failures in transmission lines or shutdown of other generating plants; and the Dickinson plant was used only during peak hours.

2. Northern Power and Light Company—

The Mobridge plant was its principal generating station, was one of the most efficient units of the three companies, and was located in the most suitable location and load center of the company's system. It was operated only during the steam heating season and for occasional standby service when the Beulah plant was down to one unit because of inspection or maintenance. During peak hours of the day and evening, energy was delivered in varying amounts from the transmission line to Mobridge for local requirements above the output of that plant. The diesel plant at Lemmon was operated only for standby protection to that town and occasionally to supply energy east to McIntosh; the Gettysburg plant was operated only for standby protection to that town and occasionally to supply energy to the branch line towns north of Gettysburg; the Hazelton plant units were operated only for standby protection to that town; and the Ellendale plant steam generators were operated only for emergencies and to supply standby service to that town.

It was stated that because of the low rate of 3.5 mills per KWH at which Northern Power and Light obtained current from North Dakota Power & Light Company, it was desirable to purchase all of its requirements above the production normally generated at Mobridge and from the other plants as above outlined, making it unnecessary or inadvisable to increase the output of those plants or to invest in additional generating capacity on that property. It was also stated that the sale of energy to defendant by Northern Power and Light Company in excess of North-

ern's requirements at 5 mills per KWH provided a small margin of profit to Northern Power and Light Company after deducting transmission losses; and further, that during certain hours of the day defendant was supplying energy to Northern Power and Light Company both at Aberdeen and at Gettysburg (for that town and towns to the north up to Bowdle), thereby making an attractive situation for Northern Power and Light Company.

3. Defendant—

It was stated that from an analysis of incremental cost of production, investment and fixed charges, standby service and cost of purchased kilowatts, and the credit of returned kilowatts, defendant "is handicapped in every respect and the loser in all transactions as now operated thru the interconnection with the Northern Power and Light Company"; that the Aberdeen station and adjoining nearby plants could adequately handle all defendant's demands in that area, and that the interconnections with Northern Power and Light Company could be only considered as essential or profitable to defendant in the event that the price (5 mills) was considerably below its own production fuel cost per KWH. It was further stated that the interconnections could only be considered advisable and profitable in the event of sale of energy to Northern Power and Light Company at a margin of profit above defendant's incremental costs at Aberdeen, and savings which might result from an improved station load factor and capacity factor. Also, the arrangement then functioning was detrimental to the operations and operating costs of defendant, particularly because when energy could best be purchased over peak hours of the day or evening, Northern Power and Light Company was then unable to supply energy to defendant but instead defendant generally delivered energy to Northern Power and Light Company during those periods, with a final result of handicapping the Aberdeen station in standby protection and resultant poor load factor.

A tabulation was included showing the deliveries at Aberdeen from Northern Power and Light Company to defendant and vice versa during the 24 hour period commencing at 12 midnight, with two or one turbines operat-

ing at Beulah. It was said that the tabulation clearly indicated that defendant was rendering combined firm power and standby service at many hours or periods; and the tabulation shows that without exception defendant was delivering current to Northern Power & Light Company during all hours except from twelve midnight to 8:00 A. M. when only one turbine was operating at Beulah, and that the flow of current to defendant was considerably reduced during the peak hours (the most desirable or essential time) when two turbines were operating at Beulah.

It was stated that the energy rates per KWH then in effect between defendant and Northern Power and Light Company were not equitable nor correctly set up with respect to the gross purchases by either company, as would later be shown by the incremental costs of production and corresponding losses as applied to portions of energy transferred between the companies; and further, that defendant incurred a loss on the deliveries of energy to Northern Power and Light Company for sale by it in Gettysburg and its other towns to the north which arrangement was unsatisfactory.

There then follows a review of statistics and actual costs of operation concerning the various generating stations of North Dakota Power & Light Company and Northern Power and Light Company (excluding Hazelton) and of the Aberdeen station of defendant. Concluding on that subject, Stokke stated that incremental cost on loads above the actual 1933 and 1934 outputs for the Aberdeen station of defendant would be 5.5 mills per net KWH.

It was further stated that unaccounted-for or total losses over the transmission and distribution system of the three companies during 1934 were (for transmission losses) 3.5% for North Dakota Power & Light Company, 15% for Northern Power and Light Company and 7% for defendant.

Suggesting a revised Rate Schedule, Stokke then submitted certain data, summary and conclusions "on the matter of a fair and equitable rate to be charged between the interconnected companies," and stated, "Unless we deal in actualities and facts, we are liable to establish

a Rate Setup which is unequitable, or favorable to one company and unfavorable or unattractive to another operating company," and that some assumptions might have to be applied as to subsequent operating conditions on the interconnected system in order to arrive at the probable exchange of power and costs, or rates to be charged. He suggested that a revised flat rate might be applied to Northern Power and Light Company from the previous experience of the last several months which probably could be revised once or twice a year to meet any radical changes in operating procedure of the plants or transmission lines or changes in sales by each of the companies, and further that a flat rate of 4 mills per KWH (covering all incremental costs and line losses on the "surplus or dump current sold to N. P. & L. Co.") be made in lieu of the then rate of 3.5 mills. He further stated that the then rate of 3.5 mills was somewhat below the cost at which Northern Power and Light Company could produce the additional required kilowatts.

Stokke considered the possibility of Northern Power and Light Company increasing the output of its Mobridge plant and correspondingly reducing its purchases from Beulah but noted the loss in sales of lignite from the mine of Knife River Coal Mining Company to the Beulah plant of North Dakota Power & Light Company, and the resultant loss of profits from such sales, which would produce a corresponding loss to United Public Utilities Corporation, which owned both the mine and the electric utility company. The Mobridge plant did not use Knife River lignite but obtained its fuel from an outside source.

It was further stated that the energy interchange rate of 5 mills between defendant and Northern Power and Light Company was "entirely unsatisfactory and unprofitable" to defendant, and that "it would be preferable that" defendant "generate all its own kilowatt-hour output requirements and discontinue purchased energy from the N. P. & L. C."; but that the interconnection at Aberdeen could remain for standby protection principally for Northern Power and Light Company, there being "very little need of the tie with N. P. & L. Co. as far as the N. W. P. S. Co. is concerned with respect to standby service or protection."

New rates for "standby or firm power" between Northern Power and Light Company and defendant were suggested, being 6.5 and 7.5 mills per KWH for energy sold by defendant to Northern Power and Light Company and 5.5 and 6.5 mills per KWH for energy sold by Northern Power and Light Company to defendant.

In concluding, Stokke stated that no consideration had been given in his analysis "to the fixed charges on the investment of hiline and substation equipment built between and connecting the three associated companies." He pointed out that the matter of the rates between the companies was very complicated because of the variables of operating conditions, and that the interconnections frequently became beneficial over periods of hours or days to each company depending on the many conditions or circumstances which developed or were involved, such as plant shut-downs and transmission line repairs and maintenance. He further stated that the load dispatchers were attempting to dispatch loads to stations which could produce energy at the lowest cost of production and at the lowest cost of transmission to points in the interconnected system.

In closing, Stokke invited a discussion of the points submitted in the analysis for arriving at any new plan of operation or any revision of existing rates.

Study Dated December 31, 1935 re North Dakota Power & Light Company and Northern Power and Light Company:

This study is stated to be an analysis of production costs of the power plants of North Dakota Power & Light Company and Northern Power and Light Company to determine a rate schedule on the surplus energy available throughout the year from the Beulah station. It states that "Previous studies from similar analysis each year have also proven the practical and economical aspects and need of the interconnection, and method of operations now in effect as in previous years since the interconnections were made between the two systems." The purpose of the analysis is stated to be to substantiate the desirability of the then operations and to prove that the then rate of 3.5

mills charged by North Dakota Power & Light Company was fair and reasonable, as well as economical, profitable and desirable for both North Dakota Power & Light Company and Northern Power and Light Company and should be continued in 1936 and probably on a similar basis for subsequent years.

It is further stated that the increased generation in net KWH of surplus power was obtained entirely from the Beulah station, and that by reason of the greatly improved load and capacity factors at the Beulah station the cost of producing such surplus energy was greatly reduced. From statistics given it was stated that the surplus energy was produced at an incremental cost of 2.82 mills per net KWH, all of which was accomplished at the Beulah station. In addition, the delivered cost being the incremental cost of production adjusted for average transmission losses in the North Dakota Power & Light Company system of 3.5%, was stated at 2.92 mills per KWH delivered.

The analysis then states:

"Now, then, in order to arrive at an equitable rate, or sale price per KWH of this surplus power, it was first necessary to determine what the Northern Power and Light Company could best do for itself in producing a like amount of required energy with its present generating equipment, and/or the installation of adequate new generating equipment, with the additional fixed charges by reason such added investment, and generation costs of such combined requirements in all power generation. At the present date, the Northern Power & Light Co. cannot produce its own requirements in total KWH sales to own customers. An addition of 3500 to 4500 Kilowatts of new generating equipment is required for independent operations or without outside purchases of KWH requirements. Therefore, we have found that the Northern Power & Light Co. would be faced with additional plant investment and fixed charges thereto on each KWH produced, plus total production operating costs of new and present equipment."

After reviewing statistics showing a unit cost per net KWH to Northern Power and Light Company, assuming

that it had adequate generating equipment, but without including therein the energy resold by Northern Power and Light Company to defendant upon which Northern Power and Light Company made a net profit at the rate of .87 mills per KWH, the analysis concludes as follows:

"As previously shown, the North Dakota Power & Light Co. can produce the surplus, or dump power, at a very low 'incremental' cost by reason of the improved load and capacity factors developed on the Beulah Station. I have also shown in preceding paragraphs that the Northern Power & Light Co. can not produce the required energy at as low a cost as purchased or delivered to its lines Elgin and Driscoll. Therefore, we have concluded that a rate of $0.0035 per KWH sold to Northern Power & Light Co. at metering points would be a profitable proposition to the North Dakota Power & Light Co. and further, would also be a practical and very economical, as well as a desirable proposition to the Northern Power & Light Co. on such an adopted purchase price, or rate, of $0.0035 per KWH. The Northern Power & Light Co. will of course, benefit to a greater extent on such a rate."

The analysis also shows a net annual return of $7,838.00, or .68 mills per KWH, to North Dakota Power & Light Company on the sale of the surplus energy to Northern Power and Light Company, being the difference between the rate received of 3.5 mills and the incremental cost of production. It also shows an annual savings to Northern Power and Light Company on the surplus energy purchased from North Dakota Power & Light Company over what it would have cost Northern Power and Light Company to produce the same with adequate additional generating equipment of $44,340, or 3.25 mills per KWH.

In concluding this analysis, Stokke stated as follows:

"I am of the opinion, from the standpoint of economics, that the rate of $0.0035 or 3½ mills per KWH sold and/or purchased, is fairly equitable, and is profitable, to both companies in the transactions. Furthermore, from the standpoint of operations to each company, we have found the arrangement by interconnection very desirable and essential throughout the year and particularly during

peak load periods. While the rate of $.0035 is somewhat more favorable to the Northern Power and Light Co., it is however good business for the North Dakota Power & Light Co."

(Study Dated December 31, 1935 re Northern Power and Light Company and defendant:

This analysis covers detailed information as to generation costs by defendant, with special analysis of such costs at the Aberdeen Station, and also information as to the desirability of continuing the interconnection with Northern Power and Light Company for the purchase of surplus energy obtainable from the Beulah station throughout the off-peak hours of the day or night. It comprises a summary of computations of plant production costs per KWH of defendant, available off-peak energy obtainable from Northern Power and Light Company and the purchase price thereof, and the incremental production cost of such power to defendant and the annual savings obtained by purchasing the same rather than generating the same in defendant's plants.

The analysis determined a savings to defendant amounting to $4,207.00 or 1.13 mills per KWH by reason of purchasing available surplus energy from Northern Power and Light Company instead of generating such energy. Stokke concludes that there were operating advantages in the interconnection of the two companies which were mutually beneficial and that the then plan of operations should be continued so as to give continued dependable service on the interconnected system and because of the aforesaid savings to defendant, saying "It is profitable business to both companies." He then demonstrates that allowing transmission losses of 20%, Northern Power and Light Company made a net profit of $2,340.00 or .63 mills per KWH on all of the surplus energy transferred over its lines and resold to defendant, being the difference between the 5 mill price and the cost of such energy and the delivery thereof to Northern Power and Light Company. In conclusion, he states that certain disadvantages to defendant because of operating conditions were to a full extent offset by the advantage in buying low price surplus energy from Northern Power and Light Company.

Study Dated July 14, 1936:

This analysis contains summaries and conclusions as to operating statistical data and costs of the interconnected system based on operating conditions and experiences during 1935 for all three companies. It states that in order to arrive at an equitable rate for the interchange of surplus power between Northern Power and Light Company and defendant, it would be proper and necessary to consider both North Dakota Power & Light Company and Northern Power and Light Company "as practically a single operating company of the U. P. U. Corporation, the holding company," and also to consider among the practical aspects the important factor of "stand-by service" from either company in the event of breakdowns of generating or transmission equipment which is mutually beneficial to defendant and the "U. P. U. Group."

The analysis states further:

"Consideration will also be given in this study to operations which theoretically would be in effect had not the interconnections been made several years ago for the transfer of surplus power. Without the advantages of the interconnections, the separately operated companies would have experienced considerable difficulties in operations, higher costs of operations, and the probability of heavy expenditures in generating equipment to handle the increasing KW demands and KWH outputs.

"All companies have benefited by the interconnections particularly during the past few years, and each succeeding year substantiates the need of the interconnections from an operating standpoint because of the increasing KWH outputs or sales of energy by each company. It is my opinion, at this date, that the benefits of the interconnections are equal to the Northwestern Public Service Co. and to the Northern Power & Light Co. and North Dakota Power & Light Co. as a combined company. The question of (a) intercompany power rates, and of (b) fixed charges on the transmission line investments of the interconnection, are details to be computed from year to year, with changing conditions of sales or outputs, demands and generating capacities and production costs."

Six tables of statistics and computations are set forth covering (1) the operations of the U. P. U. companies without the interconnections (estimated); (2) the operations of defendant without the interconnections (estimated); (3) the combined operations of the U. P. U. Group and defendant without the interconnections (estimated); (4) the combined operations of the U. P. U. companies and defendant with the interconnections (actual); (5) a summary of savings to all the companies by reason of the interconnection operations, and (6) the sales among the three companies of surplus energy during 1935 and profits thereon to North Dakota Power & Light Company and Northern Power and Light Company. The estimated figures in the tables are stated to have been predicated on the assumption that both the U. P. U. Group stations and those of defendant would have operated without serious shut-down of stations, shortage of generating equipment or transmission difficulties.

The table summarizing the savings to all companies shows and it is so stated, that a considerable saving in overall production costs was effected by the interconnected operations, being estimated at $16,882.30, or a reduction in unit production cost of .25 mills per KWH.

The analysis states that the fixed charges on the investment made to construct the interconnection equipment should be proportioned to the respective companies annually, because of variance in operating conditions from year to year; that transmission operating expenses are nominal; and (at a later point) that the fixed charges then being billed to Northern Power and Light Company "appear to be very reasonable and properly allocated between the two companies and should likely be continued as now applied."

The last table described above shows a net profit of $1,009.16 to North Dakota Power & Light Company on the surplus energy sold to Northern Power and Light Company at 3.5 mills, based on the incremental production costs with allowance of transmission losses at 3.5%, and also a net profit of $2,931.20 to Northern Power and Light Company on such energy sold by it to defendant at 5 mills, after allowance of transmission losses of 20%.

The analysis shows further that defendant made a savings of $3,581.41 on the surplus energy purchased by it from Northern Power and Light Company during 1935, being the difference between the price paid at 5 mills per KWH and the amount it would have cost to produce such energy on an incremental basis, allocating 75% of such production to the Aberdeen station and 25% to the nearby stations at Webster, Redfield and Huron, which profit amounted to approximately 1 mill per KWH.

The analysis further states:

"General Operations. In the present scheme, or plan of operations there are a variety of advantages and benefits obtained by both companies by means of the interconnection and transfer, or sale of surplus power, between the affiliated companies.

"It is difficult to show wherein the advantages or benefits are in favor of one company or the other. At the present writing, the Northwestern had adequate generating facilities in equipment to handle its own requirements in KWH output. The same is true of the U. P. U. group companies in 1935, and possibly during 1936. However, due to the increasing outputs on the U. P. U. Companies, it is likely that additional generating equipment will be required by next year—1937—for that company group system to handle its own increasing output. This will likely be done, accordingly."

Summarizing particular benefits resulting from the general operating plan, the report states that the dispatching of the load was accomplished daily with the idea of obtaining the lowest production cost energy from the principal generating stations of all three companies and simultaneously providing dependable and satisfactory service to all communities served by the three companies; further, that the high class of dependable and continuous electric service rendered by the three companies was largely due to the service available by means of the interconnections, without which there would likely have been some serious outages experiences by all the companies; further, that the running capacity factors of the primary machines in the various stations had been improved and

an improved load factor to the system and plants had been achieved from which all three companies benefited equally; further, that the availability of emergency energy by reason of the interconnections during periods of transmission maintenance or line repairs, savings in transmission operating costs, and continuity of service which otherwise might not have been accomplished, had been of considerable advantage to all three companies.

The report states that the rates for surplus energy then in force "are equitable and fair to both companies" and also that "The present plan of allocation of fixed charges on the investment in transmission interconnecting lines and equipment, to both companies, is fair and proper."

Stokke concludes with the suggestion that the allocation of operating costs and division of profits under the sale and purchase of surplus power and the fixed charges to be charged could best be worked out in a conference among himself, Strike and Sandstedt.

Q. Are the engineering studies you have just referred to those papers fastened under a clip as Exhibit 55-3?

A. Yes, those are the engineering studies.

Q. That is part of the records of your office, kept in the routine of your office? A. That is right.

Q. Are these all your studies, prepared by you?

A. Yes, I prepared them.

Q. Do you have any studies that were furnished to your company by Middle West Utilities, or by its receiver, or Middle West Service Co., or Middle West Corporation, showing studies made by them to determine that this energy should be sold to Northern Power and Light Co. at 3.5¢ per KWH? A. No, I do not.

Q. Have you any recollection of having had any in your office, these accounting or engineering studies, that were furnished by these other parties I have enumerated?

A. No, sir, I have not.

The witness Stokke had been subpoenaed to produce various records and documents.

Q. Now referring to No. 13 of the subpoena served on you, did you produce the meter readings?

A. I brought such meter readings data as was available.

Q. What ones were missing? Are you able to tell offhand?

A. The meter readings that I did find were for the years 1938, 1944 and 1945, only.

Q. 1938, 1944 and 1945. Do you know or can you account for the absence of the other years that you didn't find?

A. No, I can't.

Q. Did you make a search in the files where they normally would be kept? A. They were discarded.

Q. Do you think all of the intervening ones were discarded?

A. They must have been. We only kept them for a couple of years.

Q. Can you explain why the intervening ones were discarded and these are still here?

A. Intervening between '38 and '44?

Q. Yes.

A. They were discarded. It so happens the '38 meter readings were attached to a copy of the tabulation sheet, and exhibit that I had in my files. It was a carbon copy that I incidentally kept, which I found as I went through the files.

Q. You made a thorough search for those others?

A. Yes, I did.

Q. You think they are destroyed? A. I am sure they are.

Plaintiff's Exhibit 55-4-A, B and C, which was received in evidence, reads as follows:

Exhibit "B".

Supplement to
Interchange Capacity Agreement

Northwestern Public Service Company
Dakota Public Service Company

Rating of Generating Stations determined as of December 22, 1941:

Northwestern Public Service Company		
Aberdeen Station		6,250 K. W.
Webster	"	760 K. W.
Redfield	"	900 K. W.
Faulkton	"	110 K. W.
Huron	"	1,130 K. W.
Highmore	"	140 K. W.
Mitchell	"	7,500 K. W.
Armour	"	980 K. W.
Yankton	"	2,340 K. W.
Clark	"	180 K. W.
		29,290 K. W.
Dakota Public Service Company		
Beulah Station		6,000 K. W.
Bismarck	"	5,250 K. W.
Dickinson	"	700 K. W.
Mott	"	230 K. W.
Mobridge	"	1,000 K. W.
Ellendale	"	400 K. W.
Lemmon	"	235 K. W.
Gettysburg	"	140 K. W.
		13,955 K. W.
Total All Companies		34,245 K. W.

These ratings were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1942 and ending December 31, 1942.

Signed this 1st day of January, 1942.

NORTHWESTERN PUBLIC SERVICE COMPANY,
By O. C. STOKKE.

DAKOTA PUBLIC SERVICE COMPANY,
By J. W. CHESIRE.

Exhibit "C".

Supplement to
Interchange Capacity Agreement

Northwestern Public Service Company
Dakota Public Service Company

The Company System Maximum demands as listed below were established on December 22, 1941, by multiplying by two the net total output in kilowatt hours during the half hour from 5:30 P. M. to 6 P. M.

Northwestern Public Service Company...	17,217 K. W.
Dakota Public Service Company.....	12,903 K. W.
Total	30,120 K. W.

These Company System Maximum Demands were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1942 and ending December 31, 1942.

Signed this 1st day of January, 1942.

NORTHWESTERN PUBLIC SERVICE COMPANY,
By O. C. STOKKE.

DAKOTA PUBLIC SERVICE COMPANY,
By J. W. CHESIRE.

Exhibit "D".

Supplement to Interchange Capacity Agreement

Northwestern Public Service Company Dakota Public Service Company

Summary for determination of firm capacity and demand charge:

	Northwestern Public Service Company	Dakota Public Service Company	Total Interconnected System
Company Generating Capacities	20,290 K.W.	13,955 K.W.	34,245 K.W.
Company System Maximum 30 Min. Demands	17,217 K.W.	12,903 K.W.	30,120 K.W.
Reserve Capacities	3,073 K.W.	1,052 K.W.	4,125 K.W.
Per Cent Reserve Capacity	17.84%	8.15%	13.695%
Required K.W. Capacity for 13.695% Reserve	19,575 K.W.	14,670 K.W.	34,245 K.W.
Excess or Deficiency of Reserve Capacity	715 K.W.	—715 K.W.	....
Demand Charge @ $13.20 per kilowatt of deficiency of reserve capacity for the contract term beginning January 1, 1942 and ending December 31, 1942, Dakota Public Service Company		$9,438.00	
Demand Charge apportioned to Supplying Company (N. W. P. S. Co.)	$9,438.00		

These computations were determined and agreed to by the Committee on Operations and will apply for the contract term beginning January 1, 1942 and ending December 31, 1942.

Signed this 1st day of January, 1942.

NORTHWESTERN PUBLIC SERVICE COMPANY,

By O. C. STOKKE.

DAKOTA PUBLIC SERVICE COMPANY,

By J. W. CHESIRE.

(End of Plaintiff's Exhibit 55-4-A, B and C.)

By Mr. Benson: Q. You see Plaintiff's Exhibits 55-4-A, B, and C, don't you? A. Yes.

Q. I notice on 55-4-A there is the name, J. W. Chesire?

A. That is right.

Q. Do you know Mr. Chesire? /A. Yes.

Q. What is Mr. Chesire's position? A. On that date?

Q. When did you first become acquainted with Mr. Chesire? A. Back in the early '30's.

Q. What was he doing when you first became acquainted with him?

A. He was an operator in the power plant at Mitchell.

Q. You signed every one of the exhibits to the load contract which was contained in the interchange capacity agreement between Northwestern Public Service Co. and Northern Power and Light Co. and North Dakota Power Co., did you not? A. Yes.

Q. And you also signed the same kind of exhibits which were made with reference to the interconnection contract between Northwestern Public Service Co. and Dakota Public Service Co.? A. Yes.

Q. Did Mr. Chesire sign all of those exhibits? He did sign some of them? A. Some of them, not all of them.

Q. At the time he signed those exhibits what was he doing? What was his position?

A. He was chief engineer of the Bismarck power plant.

Q. Who had direct supervision of Mr. Chesire? Was it yourself who directed his activities?

A. Yes. In power plant operations I was his supervisor.

Q. You were his superior? A. In operations.

Q. Did he have a superior in some other function?

A. The division manager, yes.

Q. What did he do that was under the control of the division manager?

A. Principally personnel in the plant. Hiring and discharging of men. Many incidentals.

Q. Now, maximum demand was determined on the systems of Northern Power and Light and North Dakota Power and Light and Northwestern Public Service Co. Did Mr. Chesire do anything in determining those maximums or did you have charge of that?

A. We both had charge of that. Committee members.

Q. Was there a man by the name of Diehl?

A. Fred Diehl, yes.

Q. What was his position?

A. At the time he was a committee member, chief engineer of the Bismarck plant.

Q. You mean at the time his name appears on any of these documents that are in evidence here, that are exhibits to these load contracts, he was chief engineer at the Bismarck plant? A. Yes.

Q. As such chief engineer was he under your supervision and control? A. Yes, with respect to plant operation.

Q. Did anybody else sign any of these exhibits besides Chesire and Diehl, that you recall?

A. The committee member for Northern Power and Light.

Q. Who was that? A. N. S. Patterson.

Q. Where was Mr. Patterson located then?

A. Mobridge.

Q. What was position?

A. Electrical Superintendent, Mobridge Division.

Q. What was his duties as Electrical Superintendent, Mobridge Division?

A. General division superintendency over the electrical operation of the system.

Q. Was he an electrical engineer? A. Oh, yes.

Q. Was he under your supervision? A. No, not directly.

Q. Whose supervision would he be under?

A. He would be under the transmission and distribution general superintendent.

Q. Who would that be? A. E. K. Alberts.

Q. The division superintendent at Bismarck when Mr. Diehl was there, who was he?

A. His name was Porter. I don't recall his initials.

Q. Under whose supervision was he?

A. Under Mr. Alberts'.

Q. Who was division superintendent at Bismarck at the time Mr. Chesire was head of the power plant there?

A. Mr. Porter up until a few years ago, and later someone else was selected for that job. I can't remember.

Q. Who had supervision of Mr. Porter? A. Mr. Alberts.

Q. Who had supervision of the man who followed Mr. Porter? A. Transmission and electrical superintendent.

Q. Who was that?

A. Mr. Alberts at that time, if you are talking of '37 to '39 period.

Q. '39 to '41, who had charge of the division superintendent at Bismarck?

A. I am not sure it was Mr. Alberts.

Q. '41 to 45? A. Somewhere in there Mr. Alberts left.

Q. Who followed Mr. Alberts?

A. Mr. Bayles for a short period.

Q. Who followed Mr. Bayles? A. Mr. Sickel.

By Mr. Rohyl: Q. During what period were you a member of the joint staff of the connected companies, a member of the joint management staff?

A. From the beginning of 1929, on.

Q. Through 1945? A. Yes.

Q. In the matter of the production of instruments and records, etc., here, did you make any determination as to whether or not they are a part of the defendant's files or a part of the joint management's files? A. Yes, I have.

Q. Would such of those instruments as came within the defendant's charge, you have mentioned, 1929 to 1945, would they have been part of the joint management file of the three companies, and in some instances, two companies? A. Yes, in some instances two companies.

Q. And in tendering those files, you tender them with that reservation, do you? A. Oh, yes.

Q. You have spoken of J. W. Chesire. I believe you said he was division manager? A. Chief engineer.

Q. During what period did you say he was chief engineer?

A. Chief engineer of the Bismarck plant, I would say, from 1939 on.

Q. Through 1945? A. Through 1945, yes.

Q. He was not a part of your joint management operation, was he? A. No.

Q. By whom was he employed up to 1939?

A. Employed by joint management as a load dispatcher.

Q. And for what company?

A. For the operating companies.

Q. Was Chesire a dispatcher? A. Yes.

Q. Up to about what time?

A. At the time he was transferred to Bismarck as chief engineer.

Q. Can you give us the date?

A. I am pretty sure that was in the year 1939.

Q. Was he assigned chief engineer at Bismarck until after 1939 or about 1939?

A. In that period somewhere. I don't have the dates.

Q. How long had he acted as dispatcher prior to that?

A. I would say he was dispatcher, load dispatcher, from—He left the Mitchell plant in 1928, I [beleive]. Transferred to load dispatcher. Somewhere back in there.

Q. Prior to the joint management of these three companies, North Dakota, Northern, and Northwestern, where was the dispatcher's office located?

A. At the Mitchell plant.

Q. And thereafter, about 1929, it was moved to Aberdeen? A. Moved to Aberdeen, yes.

Q. And remained there through 1945? A. That is right.

Q. After 1939 you say that Mr. Chesire was employed by the Dakota Public Service Co. as chief engineer of the Bismarck Plant? A. That is right.

Q. And continued at that employment through 1945?

A. Yes.

Q. At what time did he first appear as a member of the operating committee, so called? A. 1939.

Q. And through whose appointment?

A. Through the appointment of the management of the U. P. U. Co., referring to North Dakota and Northern.

Q. And after 1939 they were merged into this Dakota Public Service Co.? A. That is right.

Q. Then the operating committee after 1939 consisted only of two members. Is that right? A. Yes.

Q. And this operating committee in these exhibits which have been offered in evidence, that was an activity under the so-called reserve capacity agreement, was it? A. Yes.

Q. And I believe you said in answer to Mr. Benson's interrogatory that Mr. Chesire and yourself, as this committee, prepared these Exhibits B? A. Yes.

Q. And you prepared them jointly, as a committee?

A. Yes.

Q. Now, that Exhibit B form was first inaugurated in 1938, wasn't it? A. Yes.

Q. And I believe you said in answer and enumerated that the first year, or possibly the first and second year, there were three members of this operating committee?

A. That is right.

Q. And you mentioned a Mr. Diehl? A. Yes.

Q. I think you said Fred Diehl. Is that right?

A. That is right.

Q. Was he ever employed by the Northwestern Public Service Co.? A. Yes.

Q. In what capacity? A. Assistant chief engineer.

Q. Where? A. Aberdeen plant.

Q. When did he go to the Northern property? Was he ever on the Northern property?

A. No, no Northern property. North Dakota.

Q. He was chief engineer at Bismarck? A. That is right.

Q. Do you know when he went there?

A. I can't remember the year, but he was chief engineer of that plant, I am sure, in 1937. Maybe in 1936. I am not positive of that?

Q. That is at Bismarck? A. At Bismarck.

Q. And you say Chesire was chief engineer at Bismarck?

A. Yes.

Q. After Diehl left? A. After Diehl left, yes.

Q. So Mr. Diehl had had considerable experience in the utility business?

A. In the utility business, in power plants, load dispatching, etc. Yes, to my knowledge.

Q. You mentioned a man by the name of Patterson, who was on one or more of the first operating committee reports? A. Yes.

Q. And you say he was located at Mobridge? A. Yes.

Q. That would be on the Northern Power and Light?

A. That is right.

Q. What was his capacity?

A. Division Electrical Superintendent, was the title.

Q. Had he been with these companies for some time?

A. He had been with Northern for several years. I would not know the number of years.

Q. When you had the three man committee did you operate together in the preparation of these forms, Exhibit B? A. Yes.

Q. Is Mr. Chesire still in the North Dakota area?

A. I believe he is today.

Q. He is still employed up there?

A. I am sure he is, as far as I know.

Q. Is Mr. Patterson? A. I think he is.

Q. Mr. Diehl? A. No. He left in 1939.

Q. You have been asked concerning who hired Mr. Chesire. In his position with the North Dakota company, and with the Dakota Public Service Co. Do you know who hired him? A. Yes, Mr. Ruden, the division manager.

Q. And Mr. Ruden was employed by Dakota Public Service Co.?

A. He was division manager, Bismarck division.

Q. Did you have anything to do with the hiring or firing of any of these men? A. No.

Q. Were you on the operating committee for the years 1946 and 1947? A. Yes.

Q. I show you papers which are attached to and a part of Plaintiff's Exhibit 35, and ask you if you signed the Exhibit B for 1946 and Exhibit B for 1947?

A. I signed 1946. I signed 1947.

Q. Do you know who represented the plaintiff company as a member of the operating committee in the year 1947?

A. Yes, I do.

Q. Who was it? A. Mr. Cecil W. Smith.

Q. Do you know who represented the plaintiff company on the operating committee for the year 1946?

A. Mr. McDonald.

Q. Are the Exhibits B, attached to and a part of the rate schedule, FPC No. 6, shown in Plaintiff's Exhibit 35, the committee reports for those years, 1946 and 1947? A. Yes.

Q. I hand you a load diagram which has been marked for identification as Defendant's Exhibit 217, which is contained in the envelope marked Plaintiff's Exhibit 53, and ask you if that was the diagram concerning which you were interrogated by counsel as to the legends and methods of preparation? A. Yes, that is the same one.

Q. Was that peak taken on the hourly basis for the purpose of the contract, Exhibit B, under the reserve capacity agreement of 1941?

A. Those readings were taken with the idea in mind that the peak might occur on that day at that hour.

Q. Was that, in fact, the coincident peak of the companies? A. Not the peak hour, no, sir, on this date.

Q. What was the peak hour as of that date?

A. December 15, 1941. It occurred on December 15th.

Q. Do you have any computations as of December 15th?

A. On load diagrams, no.

Q. I observe on the back of the diagram, Defendant's Exhibit 217, computations concerning peak hour on December 15, 1941. To what does that refer?

A. That refers to the total generation of the combined system and gives the figures there, 28,840, the total generation by each of the operating companies, Northwestern Public Service Co., Dakota Public Service Co., and also shows the quantity of transferred power between the two companies.

Q. And you made those computations? A. Yes.

Q. Are they true and correct? A. Yes.

Q. Then that represents the peak for the year shown?

A. Yes, that is right. Those are my figures.

Q. And they are in lead pencil on the back of Defendant's Exhibit 217? A. That is right.

Q. And that, you say, is a sixty minute peak?

A. Sixty minute peak, yes.

Q. You spoke of another year where the load diagrams in and of itself, with the colored crayons and the drawing, did not represent the peak period under the reserve capacity contract? A. That is right.

Q. Would that be what year, as shown by these diagrams?

A. It was the generating readings, but I am not sure it is on these sheets.

Q. You may look at them.

A. Yes, it is so noted on here, the peak occurred on January 7, 1942, whereas this load diagram was from fifteen minute readings taken on December 21, 1942.

Q. The peak that was used on the reserve capacity contract in the preparation of Exhibit B to that contract by you and the operating committee, did you say the peak is of January 7, 1942? A. Yes.

Q. Do you have any computations on that?

A. They are shown on the exhibit. January 7, 1942, the peak, coincident peak for the two companies, and their totals.

Q. And that was a computation that was used in the preparation of Exhibit B for that period? A. Yes.

(Defendant's Exhibit 218 marked for identification.)

Mr. Royhl: We ask that the particular load diagram appearing as part of the envelope, Exhibit 53, be marked as Defendant's Exhibit 218.

The Court: Very well, it may be so marked.

Q. You have spoken of certain green figures appearing on Exhibits 217 and 218, and the other load diagrams which are contained in the envelope, Plaintiff's Exhibit 53. I think you said that, in part, those were meter readings?

A. Yes.

Q. And in part they were estimates which you and the district chief made? A. The load dispatcher.

Q. Those green figures, were they always meter readings if there was a meter reading available? A. Yes.

Q. And the rest, for engineering use and experience, were estimated by you and the dispatcher?

A. That is right.

Q. I think you said there was some engineering reason why those estimates were made and that distribution of load so shown? A. Yes, I did.

Q. What was it?

A. To give some idea, general idea, of the distribution of the fifteen minute peaks in certain sections or lines or certain areas. Briefly, that was one reason for the information.

Q. You have been asked concerning generating capacity as has been shown on these diagrams? A. Yes, I was.

Q. And I think you said that there was a dependent capacity shown? A. Effective capacity or capability.

Q. And you described that as being something that was dependable to the system?

A. That illustrates or indicates the capability of the station over a continuous operation. Many hours.

Q. Something that the system can depend on?

A. That is right.

Recross-Examination by Mr. Benson.

Q. You said that the man who represented the North Dakota Power and Light Co. and the Northern Power and Light Co. on the exhibits that were attached to these inter-

change capacity agreements, were selected by the U. P. U. Co.? A. To my knowledge, they were.

Q. To your knowledge? A. Yes.

Q. Where did you get that knowledge?

A. Because they were employees—

Q. You say to your knowledge? A. Yes.

Q. Did you see a letter?

A. I was so informed by Mr. Strike, to begin with.

A. I was informed or told by Mr. Strike that I was to be the committee member representative for the Northwestern Public Service Co. And for the other companies he informed me that Mr. Diehl, at the time, had been selected as committee member for North Dakota Power and Light. And Mr. Patterson, of Northern Power and Light, and that the selection had been approved by the U. P. U. Co., Mr. White.

Q. Mr. Strike told you it had been approved? A. Yes.

Mr. Benson: Move the testimony be stricken as based on hearsay.

The Court: It is hearsay, but we will let it stand, subject to the objection.

STANLEY J. SICKEL was called as an adverse witness by the plaintiff, was sworn and testified as follows:

Cross-Examination, by Mr. Fellows.

Q. Mr. Sickel, what is your connection with the defendant company?

A. I am superintendent of transmission and distribution.

Q. For how long a time and over what period?

A. As superintendent since the Fall of 1945.

Q. What was the purpose of ever keeping these log books in the first place? What was the purpose in making these log books in the first place?

A. These log books serve as a constant day by day check on the orders given by the dispatchers to the men who are under their supervision to that extent. That ap-

plies not only to the power plants but also to line crews, trouble shooters, switchmen, anyone who may be called upon to do work on equipment that is under the supervision of the load dispatcher. We find it necessary to keep these logs for a limited period in order to establish responsibility for switching orders, and in order to determine the length and duration of interruptions. They are confirmation of verbal orders that were given. We keep them for periods long enough to satisfy any normal requirement for such confirmation, and they are bulky and our space is limited, so when they have apparently served their purpose they are discarded.

Q. Are you familiar with the rules and regulations of the Federal Power Commission in respect to keeping these particular records? A. I am not too familiar, no.

Q. Have you ever seen these rules and regulations relating to the preservation of records of public utilities?

A. I don't recall that I ever have.

(Plaintiff's Exhibit 57 marked for identification.)

Q. Did you ever see a copy of this pamphlet, Exhibit 57, which is entitled "Federal Power Commission, Regulations to Govern Preservation of Public Utilities Records," which bears the seal of that commission?

A. I don't recall that I have seen that.

Q. Was your attention ever called to that?

A. Not that I recall, no.

Plaintiff's Exhibit 57 was received.

Plaintiff's Exhibit 57 is the regulations of the Federal Power Commission to govern the preservation of records of public utilities and licensees, effective August 1, 1938, and requires that various and sundry records be kept for the years indicated in the regulation and, among other things, requires that the following records be kept for the term indicated hereinafter:

"19. Tax records:

(a) Copies of schedules, returns and supporting working papers to taxing authorities and records of appeals.	20 years.

59. Production:

(d) Generation and output logs with supporting data. 6 years.

(e) Station and system generation reports. Permanently.

(f) Generating high-tension and low-tension load records. 6 years.

60. Transmission and distribution:

(a) Substation and transmission line logs. 6 years.

(b) System operator's daily logs and reports of operation. 6 years."

By Mr. Royhl: Q. You have produced the dispatch log, so-called, for the years 1944 and 1945? A. That is correct.

Q. That is in four volumes? A. I believe it is.

Q. I think you told counsel that these registered daily messages between the dispatchers over the integrated systems and with the field operators?

A. They are records of telephone conversations. That is right.

Q. With whom, normally, does the dispatcher communicate?

A. In the ordinary dispatching of load on the system, the dispatcher communicates with the operator on duty at the various power plants. Occasionally with the chief engineer. Normally with the operator on duty.

Q. That is, in the handling of the loads from the various plants? A. That is right.

Q. Now, in the messages that are shown, that is one end of the message. Is that registered on the other end of the message?

A. Yes. Both parties to the conversation keep their end regarding the conversation.

Q. Then assuming that the dispatcher was calling the chief engineer of the plant at Bismarck, would that in-

dividual in Bismarck maintain the identical record normally?

A. Yes. He would have the same record of the same conversation recorded at his end.

Q. Does he maintain the same type of record?

A. It is kept in the same form, yes.

Q. Showing the hour and the day when the message was sent or received? A. That is correct.

Q. And the nature of the order that followed?

A. Yes, the substance of the order. Not verbatim.

Q. You are familiar in a general way with these records, are you? A. In a general way, yes.

Q. Down through the years do they, in the handling of these various matters, seem to develop a code of their own?

A. To some extent they do. It is not a shorthand, but they converse in their own slang, if you might put it that way. Many of the codes are recorded that way. They are perfectly intelligible to one who is familiar with it.

Q. Does the dispatcher's record show anything in addition to the messages or communications, or does it show what operation followed as a result thereof?

A. Not in a general sense, no. It records his instructions, but the record of what actually took place—may I use an example?

Q. Yes.

A. The dispatcher might call the plant and ask them to pick up a thousand kilowatts, or drop off five hundred kilowatts as the case may be. That instruction would be recorded in the log, but the actual fact of whether or not they did pick up or did drop off would be reflected on the station log itself in the meter reading.

Q. And the station log which you mentioned, in that instance, would be a record such as these records that you have furnished here? A. That is correct.

Q. Known as "daily station log"? A. Yes.

Q. And the result of that communication would be reflected either by stepping up the load or decreasing the load in that station? A. Exactly.

Recross Examination, by Mr. Fellows.

Q. When did you say you went in there as head of this operating department?

A. I became superintendent of transmission and distribution in 1945. I was acting superintendent from late 1942 until 1945.

Q. Prior to that what were you doing?

A. I was assistant.

Q. When did you go to work for the company?

A. Continuous employment or first employment?

Q. First employment. A. 1927.

Q. Continuously from when? A. From 1933.

Q. I think you testified Friday that the load dispatcher was so appointed and regulated that he represented both the Northern and Northwestern Public Service Companies?

A. That is right.

Q. And the Northwestern Public Service Company did not have control of his operations. That is right, isn't it? That is what you testified to, isn't it?

A. The dispatcher was a joint employee with the rest of us.

Q. But his control was both in the northern companies and Northwestern Public Service Co.?

A. His control—I don't quite identify what you mean by that.

Q. Who had control of the load dispatcher?

A. He was supervised by Mr. Stokke and myself.

Q. Representing which companies?

A. Representing all of the companies.

Q. That is what I am getting at. When you were asked to bring in, under subpoena, all of your accounting records, your engineering accounting records, did you run across this letter of July 15, 1936, which is marked Plaintiff's Exhibit 58?

Plaintiff's Exhibit 58, which was received in evidence, reads as follows:

Plaintiff's Exhibit 58.

July 15, 6.

Inter-Connection Contract.

Northwestern Public Service Company.
Northern Power & Light Company.

F. E. Kruesi.
C. J. Strike.

I am enclosing the drafts of a proposed contract for inter-connection between the above mentioned Companies. I am also enclosing an analysis showing the purported savings to each of the Companies by reason of the inter-connection.

You will note that the statement shows that the cost of power for the combined companies would be increased $9,341.05 if the systems were operated independent of each other and therefore the above figure is assumed to be the saving due to the present method of operation.

Using the year of 1935 as a basis, and the present inter-change rates, the benefits to the Companies are as follows:

Northwestern Public Service Co....	$3,581.41	38.3%
North Dakota Pr. & Lt. Co.....	2,821.05	30.2%
Northern Power & Light Co.....	2,938.59	31.5%
	$9,341.05	100.0%

You will appreciate that there are a tremendous number of calculations to be made and also conditions to be assumed, and we have in this analysis, assumed that Northwestern's present operations of banked boilers, et cetera, would be no different operated as an isolated system. This, however, is somewhat conjecture in that under the present operations, Northwestern does have adequate reserve, and is the Company which is called upon for emergency.

In other words, if a boiler is down at Beulah, Northwestern picks up the deficit in capacity, if there is any trans-

mission line trouble which isolates Beulah partially, or totally, it is Northwestern which picks up the load.

It might be argued that in as much as Northwestern is paying half of the fixed charges on the inter-connection facilities, that they should be entitled to one-half of the savings, but this difference amounts to only $1100.00 per year, and it would be difficult to adjust this to a more accurate basis as conditions change from time to time and it is impossible to exactly allocate the savings unless the rate per K. W. H. for inter-change transfers was changed each month. For instance, Beulah was down with a boiler the entire month, and Northwestern furnished current constantly into the Northern system.

The effect of our study can be summarized as follows:

	Savings Without Inter-connection	Increased Costs and Loss of Revenue	Savings by Reason of Inter-connection
N. W. P. S. Co. purchased 3,673,240 K. W. H. from Northern Power & Light Co. at 5 mills	$18,366.20		
Cost of generated in Northwestern Pub. Serv. Co. plants		$21,947.60	
Northern Power & Light Co. purchased 4,407,888 K. W. H. from No. Dak. Pr. & Lt. Co. at 3½ mills for delivery to N. W. P. S. Co.	15,427.61		
Northern Pr. & Lt. Co. sold 3,673,240 K. W. H. to N. W. P. S. Co. at 5 mills		18,366.20	
No. Dak. Pr. & Lt. Co. generated 4,407,888 K. W. H. for N. W. P. S. Co. at increment cost of 2.86 mills.	12,606.56		
The above sold to Northern Power & Light Co. at 3½ mills		15,427.61	
Total	$46,400.37	$55,741.42	$9,341.05

If the inter-connection did not exist we have assumed that 75% of the kilowatt hours now purchased from Northern would have been generated by the Aberdeen station at an incremental cost of 5 mills per K. W. H. and the balance by our other stations at an arbitrarily assumed incremental cost of 7.1 mills per K. W. H.

After carefully studying all angles of this situation we believe that the present rates fairly distribute the savings

by reason of the inter-connection, assuming that the next generating equipment will be added on the U. P. U. system. The savings are well enough distributed that we would not recommend any change in the inter-change rate at this time.

You will appreciate that the operations of the entire system is under the Load Dispatcher which keeps the control in Northwestern's hands, and by reason of such, we believe that the operation of equipment will continue to be adjusted so that the present ratio of benefits will continue approximately as is.

In addition to the savings listed above, there are certain other benefits by reason of operating the three systems as an inter-connected system, some of which are as follows:

1st. The inter-connection facilities often permit maintenance of generating units, boilers, transmission lines, etc. without placing into service inefficient standby equipment. It is impossible to accurately determine the monetary benefits in all cases but we feel confident that the power costs of all companies would be increased if it were not for the inter-connection under such circumstances. However, no attempt is made to include such benefits in the cost analysis.

2nd. Service has been greatly improved, particularly to the U. P. U. Companies and on the line west of Huron, and the number of service interruptions substantially reduced.

Conclusion:

We believe that the inter-connection does serve as an advantage to all companies and that within reasonable bounds, the benefits are fairly well allocated using the present inter-change rate which is 3½ mills from North Dakota Power & Light Company to Northern Power and Light Company, and 5 mills for inter-change between Northern Power and Light Company and Northwestern Public Service Company.

I trust that the enclosed study will be of some assistance to you in arriving at a conclusion in this matter.

Yours very truly,

C. J. STRIKE.

CJS–B

Savings by Reason of Operating the Systems of Northwestern Public Service Company—North Dakota Power & Light Company and Northern Power & Light Company as an Interconnected System

	Northwestern Public Serv. Company	No. Dakota Power & Lt. Company	Northern Power & Lt. Company	Total
Present Costs				
KWH Generated	47,868,585	34,772,029	3,725,338	86,365,952
" Purchased Outside	7,410,800	.....	.....	7,410,800
" " Inter Co.	3,673,240	.....	12,639,756	.....
Total Output	58,952,625	34,772,029	16,365,094	
Cost of Power				
Generation	443,433.50	198,183.08	55,372.65	696,989.23
Purchased Outside	47,095.00	.....	.....	47,095.00
" Inter Co.	18,366.20	.....	44,239.16	62,605.36
Total Cost of Power	508,894.70	198,183.08	99,611.81	806,689.59
Cost Per Kilowatt-Hour—Mills				
Generation	9.26	5.7	14.86	
Purchased Outside	6.35	....	....	
" Inter Co.	5.	....	3.5	
Total	8.63	5.7	6.08	
Accounted For				
Sales	46,535,241	30,303,487	11,324,120	
Company Use	1,091,832	152,314	132,949	
Total Accounted For	47,627,073	30,455,801	11,457,069	
Unaccounted For	11,325,552	4,316,228	4,908,025	
% Losses	19.21%	12.41%	30. %	
Costs of Generation Without Interconnection				
Additional KWH to be generated..	3,673,240	(3,673,240)		
Losses Estimated 20%		(734,648)		
	3,673,240	(4,407,888)		
Northwestern Public Service Company				
Aberdeen — 2,754,930 KWH @ 5.6 mills	15,427.61			
Other Stations 918,310 KWH @ 7.1 mills	6,520.00			
Total 3,673,240	21,947.61			
Savings in cost of Inter Co. purchased	18,366.20			
Net additional cost	3,581.41			3,581.41

	Northwestern Public Serv. Company	No. Dakota Power & Lt. Company	Northern Power & Lt. Company	Total
North Dakota Power & Light Co.				
Beulah Savings 4,407,888 KWH @ 2.86 mills		(12,606.56)		
Loss in revenue KWH sold to N. P. & L. Co. 4,407,888 KWH @ 3½ mills		15,427.61		
Net additional cost		2,821.05		2,821.05
Northern Power & Light Co.				
Loss in KWH sold to N. W. P. S. Co. 3,673,240 @ 5 mills			18,366.20	
Savings in Purchased from N. D. P. & L. Co. 4,407,888 @ 3½ mills			(15,427.61)	
Net additional cost			2,938.59	2,938.59
Total costs without Interconnection	512,476.11	201,004.13	102,550.40	816,030.64
Savings by reason of Interconnection	3,581.41	2,821.05	2,938.59	9,241.05

( ) Denotes red figures.

A. I don't recall ever seeing this letter. It perhaps was brought in, but it was not in my files.

Q. You recognize it as a carbon copy of a letter written by Mr. C. J. Strike to the North Dakota Public Service Commission, don't you?

A. No. I could not recognize. I have never seen it before.

Q. Do you recognize it as a carbon copy of a letter written by Mr. Strike? Or some person in connection with the Northwestern Public Service Co.'s office?

A. I can't recognize it because I have never seen it before.

Mr. Fellows: We offer in evidence Plaintiff's Exhibit 58, being the certificate of the Secretary of the Public Service Commission of the State of North Dakota, attached to the letter of July 15, 1936.

Mr. Royhl: Objected to as incompetent, irrelevant and immaterial; no proper foundation laid; hearsay as to this defendant.

Mr. Fellows: This is a certified copy of an official file.

Mr. Royhl: That is certified copy from North Dakota.

The Court: Received.

Plaintiff's Exhibit 55-5, which was received in evidence, reads in part as follows:

Plaintiff's Exhibit 55-5.

Northwestern Public Service Company
General Offices
Huron, South Dakota

June 6, 1930.

To the Honorable Mayor and City Commission of the City of Pierre, Hughes County, South Dakota.

Gentlemen:

On May 9, 1929, Northwestern Public Service Com-[com]pany, filed with the City Auditor a proposal offering to purchase Pierre's Electric Utilities. This proposal was submitted to the electors of Pierre on September 3rd, 1929 and was defeated together with our franchise the same being Ordinance No. 387 of the City of Pierre.

In making our [propsal] last year we purposely did not include the gas utility, for at that time the City Commission had contracted for the drilling of an additional gas well, the success of which at that time no one could predict.

It now appears that there is sentiment to sell both the electric and gas utilities.

In that our Company has never made a proposal to purchase the gas utility, we desire at this time to file our offer for the same, which said offer is herewith submitted:

Northwestern Public Service Company hereby offers to purchase the Gas Utility complete including gas wells, mains, services and meters owned by said city and all appurtenances in connection with said system and to pay therefor the sum of On Hundred Twenty-five Thousand

Dollars ($125,000.00) payable in cash upon delivery of proper instrument of transfer conveying legal title to said property free and clear of all liens and encumbrances.

This offer is contingent upon the passage and approval in the manner provided by law of a franchise granting to said company the right and privilege to construct, maintain and operate within the corporate limits of the City of Pierre, a gas plant and distribution system for the manufacture and distribution of gas for commercial, industrial and domestic purposes.

* * * * * * *

This proposal is contingent on the purchase of the electric utility as covered by our proposal dated May 9, 1929, which is on file with the City Auditor of the City of Pierre, providing for the payment of $325,000.00 in cash, plus the city's indebtedness to its customers for meter deposits, for the electric utility, contingent only on the granting of a franchise to said company to maintain and operate an electric system within the corporate limits of the City of Pierre.

Paragraph —4— of our proposal on file recites that Pierre would be given the benefit of any rate reductions made. Since our last proposal the rate for water pumping has been reduced to 2¢ per KWH a reduction of 20%. This reduction would be available to Pierre.

In addition to this Pierre would be guaranteed of rates always equal to those in Aberdeen, Redfield, Huron, Mitchell and Yankton.

If the City Commission so desires we will deposit with the City Treasurer a certified check for $25,000.00 or furnish a Surety Bond for 10% of the combined bid of $450,000. as evidence that the company will carry out the terms of its proposals.

Because of the fact that Northwestern Public Service Company is the largest electric and gas utility operators in South Dakota we believe that Pierre can be more advantageously served for both electricity and gas by our company [that] any other company.

Because we have not previously offered to purchase the Gas Utility, we file this proposal at this time.

Respectfully submitted,

NORTHWESTERN PUBLIC SERVICE CO.

By C. J. STRIKE,

Vice President.

Mr. Fellows: We offer in evidence Exhibit 55-5, which is taken from Exhibit 55 in evidence here.

Mr. Royhl: The defendant objects to Exhibit 55-5, as being wholly incompetent, irrelevant and immaterial; not within the issues in this case; no proper foundation laid; incompetent for any purpose; at a time remote by at least seven years from the times involved in this litigation.

The Court: Overruled. Received.

RALPH E. MAUCH was called as an adverse witness by the plaintiff, sworn, and testified as follows:

Cross-Examination, by Mr. Fellows.

Q. Mr. Mauck, what is your connection with the defendant company?

A. I am assistant secretary and assistant treasurer.

Q. You are assistant to Mr. Buckmier? A. Right.

Q. Did you get together these various things demanded by the subpoena, collect and assemble them in order to bring them into court? A. Part of them I did, yes.

Q. Did you bring Exhibit 216 and the various papers that go to make it up? A. Yes, I did.

Q. Were they taken from your files? A. May I explain?

Q. Yes.

A. When this litigation first started, Mr. Sanborn told me to gather as many of the files together, dealing with relationship between these companies, as I could find.

Q. Regardless of when you did it, did you bring those in here from your files? A. I did.

Q. And they are part of the files of your company?

A. Right.

Q. And have been kept in the regular course of business through the years? A. Right.

(Exhibit 216-A marked for identification.)

Q. Exhibit 216-A, which is one of the sheets of 216, state whether or not you brought that from the files in your office? A. I think I did.

Q. Don't you know you did? A. Yes, I did.

Q. Compare that with this fourth page of our Exhibit 58, and state whether or not they are identical copies, one with the other?

Mr. Royhl: Objected to as the instruments themselves are the best evidence of that.

The Court: We will take an answer.

A. I would say yes, they were.

Q. Do you know what the purpose of making up 216-A was?

A. I would assume by the title that it bears, the purpose was to show savings by reason of operating the systems of Northwestern Public Service Co., North Dakota Power & Light Co., and Northern Power & Light Co., as interconnected system.

Q. Was that for the purpose of filing with some commission?

Mr. Royhl: Objected to as calling for the opinion and conclusion of the witness.

Mr. Fellows: Some place in the corporation there is some responsibility and knowledge on the part of the officers.

By Mr. Royhl:

Q. When did you first become employed by the Northwestern Public Service Co., or the interconnected companies?

A. I was first employed in the summer of 1940, and until in 1942.

Mr. Royhl: May I renew our objection.

Mr. Fellows: I haven't offered anything.

By Mr. Fellows:

Q. When you got this sheet, 216-A out of your files, did you find this letter of July 15, 1936, attached to it. That is the letter certified to by the North Dakota board?

A. I could not be positive that it was attached to it. I don't know.

Q. If it was attached to it, what became of the letter of July 16, 1936, inasmuch as it is not in 216, which was produced here?

A. If it were attached I would assume that it was not considered to be a study.

Plaintiff's Exhibit 216-A was received in evidence and reads as follows:

Plaintiff's Exhibit
216-A (Page 425) is
shown on Card 11

Blank Page

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Q. Did you go through there and take some letters or other things which were attached out of the file?

A. No sir. Generally speaking. when I went through and assembled these files I tried to leave everything that was attached together.

Q. Can you account for the non-presence in 216 of the letter of July 15, 1936, which states, "The operations of the entire system are in the load dispatcher which keeps control in Northwestern Public Service Co."? Can you account for it not being there in 216 attached to the same exhibit which is attached to the letter?

Mr. Royhl: Same objection.

The Court: Overruled. The question can be answered by yes or [not]. Can you account for it?

A. The only way I can account for it, it was not considered to be a study.

Mr. Fellows: [Plaintiff's] offer in evidence Exhibit 216-A.

Mr. Royhl: The defendant objects to the offer of Exhibit 216-A for all of the reasons and all of the grounds urged in the objection to Exhibit 58.

The Court: Overruled.

Mr. Fellows: That is all.

Examination by Mr. Royhl.

Q. Mr. Mauck, in assembling these various records and files that have been brought into court by the defendant, can you say whether or not Exhibit 216, and in particular, 216-A, were a part of the Northwestern Public Service Co. files, or of the interconnected company files?

A. They were files that I gathered together from—I tried to gather all of the files—some of them came out of the basement, some of them came out of different offices, some of them had been Mr. Sandstedt's. Some of them I was not even sure who had handled them or whose they were. They appeared to be general office files. I suppose you could say they were, generally speaking, joint management. I imagine they would be so classified.

Mr. Fellows: Plaintiff offers the following portions of the deposition of C. J. Strike, taken pursuant to stipulation on the 6th day of May, 1947, at Boise, Idaho, now on file in the office of the Clerk of this Court, and which deposition was taken on behalf of the defendant.

C. J. STRIKE, being duly sworn, testifies:

(Direct Examination, by Mr. Royhl, read by Mr. Fellows:)

Q. Your name is C. J. Strike? A. Correct.
Q. How old are you, Mr. Strike? A. Fifty two.
Q. Where are you residing at the present time?
A. Boise, Idaho.
Q. Is that residence permanent? A. Yes.
Q. How long have you resided in Boise?
A. Since June 11, 1938.
Q. What is your business?
A. I am Chairman of the Board of Directors, President and General Manager of the Idaho Power Company.
Q. How long have you been in the power utility business? A. All my business life—that dates back to 1915.
Q. And have you been at that work continuously since 1915? A. Yes.
Q. Did that include construction work, incident to the power utility business?
A. Yes, sir. I started out originally as an electrical contractor, building power plants, transmission lines, distribution systems, and then that led me into the utility business, about 1921, I have forgotten which year it was, 1919 to 1921, somewhere along in there.
Q. And where was it that you went into the business?
A. At Webster, South Dakota, that is where the offices were located. We took over the properties of the bankrupt Dakota Northern Power Co., and organized the Consumers Electric Service Co., serving communities in that area.
Q. Did you put together in this company a number of stations?
A. We consolidated the bankrupt company in that organization, and almost coincident with that program, I joined the Albert Emanual organization, when they organized the Northwestern Public Service Co., and acquired the

properties at Aberdeen, South Dakota, Mitchell, South Dakota, Yankton, South Dakota, Huron, South Dakota, Columbus, Nebraska, North Platte, and subsequently they acquired my property, the Consumers Electric Service Co., I believe in 1927.

Q. When were you first employed by the Albert [Emanaual] Co.? A. 1924.

Q. And where were you located?

A. I was living at Webster, South Dakota at that time, which was the office of our little company, the Consumers Electric Service Co., and also the office of our electrical contracting company, known as the Midwest Electric Co. I entered the employ of Albert Emanual and the following year, 1925, I moved to Huron, where the offices of the Northwestern Public Service Co. were located, which company was organized by Albert Emanual to consolidate all of the properties I have just described.

Q. During this period of time you have been in the work of management of power utilities?

A. I might just trace that chronologically. My first job was that of new business manager in acquiring properties. I acquired practically all of the properties that made up the Northwestern Public Service Co., except the initial purchase of the nucleus company. I moved from that position into the position of Vice-President and General Manager, and in 1937, as I recall, into the position of President and General Manager.

Q. When did you sever your connections with the defendant company, the Northwestern Public Service Co.?

A. In June of 1938, coincident with my accepting the position with the Idaho Power Company which I previously described, and which position I now hold.

Q. You stated that with the Northwestern Public Service Co. you held the position of Vice-President and General Manager. Is that correct? A. Yes.

Q. For what years were you such?

A. I will have to rely upon my memory, there were some changes in title through there, but my recollection is that it was 1931 or 1932, when I moved from the new business end into the operating end. Now the titles are not always made of record exactly at the time you move into those positions, but that is about the time.

Q. From that time on were you continuously the operating head of that company?

A. Yes, I was the operating head of the Northwestern Public Service Co. from that time, which was about 1931 or 1932, until the time I moved to Idaho, which was 1938.

Q. When did you first become connected with the North Dakota companies, the North Dakota Power and Light Co., to be referred to hereafter in this testimony as the North Dakota Co., and the Northern Power and Light Co., to be hereinafter referred to as the Northern Co.?

A. In the early fall of 1929, when the Middle West Utilities Co., which was the holding company for the Northwestern Public Service Co., acquired the control of the United Public Service, which was the top holding company for the North Dakota Power and Light, the Northern Power and Light, and Knife River Coal Mining Co., which property happened to be contiguous to the Northwestern Public Service Co. territory. We were notified by telegram, as I recall it, by L. B. Bredlove, Assistant to the President of the Middle West Utilities Co., stating that they had acquired United Public Service Co. control and instructing us to take charge of the subsidiaries that I have just described, namely, the North Dakota Power and Light Co., Northern Power and Light, and Knife River Coal Mining Co. That was, as I recall, about the first of October, 1929.

Q. Do you remember what office you held with those three companies you have mentioned, the North Dakota Company, the Northern Company, and the Knife River Coal Mining Co.?

A. I was Vice-President of those companies up until the time I became President of the Northwestern Public Service Co., and coincident with that I became President of those companies. The officers of the Northwestern Co. and those U. P. U. subsidiaries were practically the same. There was a little differential, as I recall it, in the directorate of the Knife River, I have forgotten what it was, but I was Vice-President.

Mr. Benson: Have him identify what he means by "U. P. U."

Q. When you speak of the "U. P. U.", what company is that?

A. That is the United Public Utilities, which was the underlying holding company under the United Public Service. That was the direct parent of the North Dakota Power and Light Company, the Northern Power and Light Co., and the Knife River Coal Co.

Q. From 1929, the time of your election, who was the operating head or general manager of those three named companies, the coal company, the North Dakota Co. and the Northern Co.?

A. At the time we were instructed to take over the property, each of those companies had a general manager of their own. Mr. Warren was General Manager of the Northern Power and Light Co., Mattison was General Manager of the North Dakota Power and Light, and Mr. Kraft was the General Manager of the Knife River Coal Mining Co. Our first move was to discontinue general offices, general management, on the property as such, and to consolidate the general management in Huron under the staff of the Northwestern Public Service Co. At that time Mr. T. T. Parker was president of the Northwestern Public Service Co.

Q. He was also made president, during his time there, of the North Dakota Co., was he not? A. Yes.

Q. That is, the operating company you referred to?

A. Yes.

Q. Did you, following Mr. Parker's resignation as president of those companies, become the General Manager of the three operating companies in North Dakota?

A. I really became the General Manager prior to Mr. Parker's resignation. Mr. Parker moved to Omaha, and set up executive offices as president of all the companies, at the same time he was made president of the Central Power Co., which was another subsidiary of the Middle West Utilities Co., and coincident with that move, I was made General Manager of all of the operating properties, and all operations centered under the Huron office.

Q. Did you continue in that relationship with all of the operating companies named in North Dakota, and also the defendant corporation until approximately June, 1938?

A. I continued in that same relationship—Mr. Parker's resignation brought in Mr. Krusei, who succeeded Mr. Parker as president of all of these companies, and so I continued as Vice-President and General Manager and operating head, of all of the properties, until 1937, when Mr. Krusei resigned, and I became President and General Manager, and our executive office, which was then at Grand Island, Nebraska, was closed.

Q. And everything then was centered in Huron, South Dakota?

A. Everything was centered all through the years in Huron, so far as operations were concerned, but the executive office, the President, was first in Omaha, and later moved to Grand Island.

Q. Then following your election to the offices mentioned, in the year 1929, of the three operating companies of North Dakota, did you make a survey of those companies, their territory, and their facilities? A. Yes.

Q. Did that survey include management, and past management?

A. The survey included an analysis of economies that could be effected by closing the general management offices of the three companies, which I have previously described, setting up what we in the industry choose to call divisional operating offices, and a centralizing of general bookkeeping and customer billing, in the one office at Huron, South Dakota. That was the first analysis that was made, to get the immediate benefit of economies which could be obtained merely by shifting people.

Following that analysis, and those changes, which took place over a period of weeks and months, we made an analysis of generating capacity, transmission facilities, and service problems, that affected the companies which came under our jurisdiction at that time. This particularly applied to the Northern Power and Light Co., which served all of the little towns between Bismarck and Aberdeen, and because of its far flung transmission system, a tremendous service problem was involved, and we made an analysis to determine the program to [followed]. I might add at this point, that at the time we were instructed to take over the operations of the properties we were told by our

holding company, the Middle West Utilities Co., that it was their plan to merge the North Dakota Power and Light and the Northern Power and Light into the Northwestern organization. That was our instruction, and our thinking and our analysis followed that general instruction.

Q. Well, can you state what conclusion you came to, following this survey, as to what would be done?

A. The conclusion we came to was that the properties of the Northern Power and Light Co. were scattered over such a wide area that the location of new generating equipment in any one location couldn't possibly meet the service problems that confronted us. As an example, you had an area around Mobridge, you had an area around Gettysburg, and you had an area around Ellendale, and by locating the generating equipment in any one place, you had the problem of transmitting that energy into this far flung system of small towns, and the conclusion was that system service could best be protected by three interconnections—and interconnection with the Northwestern Public Service Co. at Gettysburg, which gave a feed into that area, and an interconnection west of Aberdeen, at Ipswich, which gave a feed into that area, and an interconnection north of Aberdeen, at Barnard, which fed into the Ellendale area. By that plan, we could give reasonable service over the transmission facilities of the Northern Power and Light, which were not stable for that area. The transmission lines from Steele, North Dakota, south through Wishek, and Eureka, Bowdle, thence south to Gettysburg, and west to Mobridge, was a very light line, poorly constructed, and we had tremendous transmission service problems, and the interconnections that we concluded enabled us to maintain service, whereas if we hadn't had the interconnections, we would have been confronted with rebuilding of our main bone transmission lines from the North Dakota Power and Light System. I might state there that the basic source of power for the Northern Power and Light was the North Dakota Power and Light System.

Q. Did you eventually construct those interconnections you have spoken of at Ipswich, Gettysburg and Barnard?

A. We eventually made all three connections—the

Northwestern Public Service Co. financed, built and owned the three connections.

Q. Were these interconnecting facilities completed prior to the time that Mr. White became connected with the company?

A. My remembrance is that the interconnecting facilities were completed prior to the time that Mr. White became actively engaged in his work. I might be approximating the time, but my recollection is that we had no discussion with Mr. White as to the facilities. I might add that those facilities were built by the Northwestern, based upon the statement that it was the intention of the Middle West Utilities Co. to merge those electric properties into Northwestern, and that probably accounts for our not asking anybody's opinion, or authority, or permission, from the United Public Utilities side of the matter.

Q. Was that put into effect?

A. That was put into effect—pardon me, you say what was put into effect?

Q. The handling of the Beulah generating plant in accordance with your conclusion?

A. Yes. We had a centralized dispatching system, with dispatchers located at Aberdeen, who dispatched all of the service of the Northwestern Public Service Co. in South Dakota, and the North Dakota Power and Light and the Northern Power and Light, and their instructions were, of course, to follow this pattern I have just described in the operation of the system, and assuming no transmission difficulty the Beulah station was operated at full capacity, up to the ability to transmit over the transmission lines of the system.

Q. Did you consult, as this matter progressed, during the time Mr. White was connected with the North Dakota Company, with him concerning these matters?

A. Yes, we consulted with Mr. White. I would say that in most instances our consulting was that of submitting our recommendations. I want to make clear that we didn't ask Mr. White to tell us what to do, or anyone in the Middle West organization. Our own staff, on those properties, determined what, in our opinion, was the most practical and economical thing to do, and then we made definite recommendations, not only to Mr. White, and his

holding company, but to the Middle West Holding Company.

Q. Subsequent then, and after such recommendations were approved by those connections, did you proceed along the lines indicated?

A. Yes. We occasionally would have some modifications on something we proposed, due to the result of compromise, but we ultimately would conclude whatever it was and proceed.

Q. That brings us to another phase of this case. During your connection with the companies in the capacities that you have already mentioned, did you cause departmental heads of the companies to make surveys with respect to the generating necessities of the several companies?

A. Yes.

Q. Was the natural load, and the condition of the generating plants, such as to necessitate such a survey?

A. Well, of course, you are dealing with a constantly changing condition, and the engineers were instructed to follow the load curve, and the capacity of the system, so that we could plan additional system capacity for future requirements. Our studies at that time, in the period involved, between 1930 and 1936, were based upon this assumption, that neither group had built any power plant for the benefit of the other. The interconnections of transmission lines were to get the best possible diversity element between the two systems. We recognized that some place along the line, either the Northwestern Public Service Co. or the United Public Utilities property, which was the North Dakota Power and Light and the Northern, would have to provide additional generating capacity, and as I remember we set up the mechanics to study those conditions and to make recommendations, so that each additional unit of generating capacity would be determined at the time in the light of the facts as they existed, and a basis for allocating fixed charges was outlined. But there was nothing concluded, during my regime, in the way of definite recommendations for additional capacity, although the studies were under way.

Q. Did that in your mind naturally raise the question of reserve capacity charges, inter-company?

A. Yes, but we disabused our minds of that question, on

we made recommendations and suggestions, and I recall making up, or having made up, under my direction, an estimate of the securities of the Northwestern Public Service that we could give the United Public Utilities Company for their property. We were hopeful that we could work something out, but nothing materialized.

Q. Well, do I understand you to say that energy flowed across your interconnection facilities up to the neighborhood of Steele, North Dakota?

A. There were times when we would pick up the territory clear back to Bismarck. It would all depend upon where your line trouble would come in.

Q. Was that true prior to 1936?

A. That was true prior to 1936.

Q. And was that true after you made the 1936 contract?

A. That is correct. The purpose of the interconnection was to give that feed-in from the south. Under normal operations, the North Dakota power system was able to take care of practically all of Northern's requirements, even over the peak, during my regime, and that was the point concerning which I testified this morning, that is, the reason the Northwestern Public Service Company was obliged to maintain banked boilers at its Aberdeen station, or maintain rolling capacity, was to pick up not only what they might be buying from Northern Power and Light, but to pick up Northern Power and Light Company's own business in case of line trouble. I am sure you will find, in the current log records, many many instances where Northwestern performed that service. Sometimes it would be through north of Aberdeen, sometimes up to Gettysburg, depending upon where the line trouble would exist.

Q. Did power from time to time come out of the Aberdeen generating station, and go west to Ipswich, through Bowdle, and then on down to the Northwestern Public Service Company's property?

A. It very seldom would go that way. The normal operation was that the Northern Power and Light Company's line tied through the Aberdeen station, so that the line coming from Ellendale south merely cut through the station, and went on west to Ipswich, and on to Mobridge, and so assuming that the North Dakota and the Northern,

in the aggregate, had enough power to meet all of their requirements, if it was merely a bus-tie, and the Northwestern was tied into the bus, and if they had surplus power, there would be a flow onto the Northwestern system—if they would be short for a period of time, Northwestern would feed into the bus-tie. Have I made myself clear? This was merely a tie through the station. The Northwestern had a 33,000 volt system, and the Northern Power and Light had a 38,000 or a 22,000 volt "Y" connected system. So assuming that the North Dakota and the Northern had enough generating capacity to carry their load, they merely fed through the Aberdeen substation, and there was no interchange of power between the two.

Q. Then if the Northern had had a line across from Barnard to Ipswich, it would have worked just the same?

A. Yes—that was the original Northern conception prior to the time that the property was acquired by the Middle West. They intended to build across from Barnard to Leola, down to Ipswich.

Q. Where did the Beulah power go—I know you smile just like all engineers smile when I ask them where power goes—where did it go?

A. Well, the bulk of the Beulah power, of course, fed into the Bismarck area. All power on the entire system fed into the transmission network, it was a problem of controlling frequency, and the Beulah station, because it was one we were trying to get a high load factor on, was taking the lead in system control. During the peak, the Beulah power might not get very far beyond Bismarck, but, on off peaks, some Beulah power might actually make it to Aberdeen, or get down into Gettysburg, such places as that. It all depended upon the hour of the day, and the capacity of the line.

Q. Did you make any studies to determine line loss on the North Dakota Power and Light Company system?

A. Yes, we made numerous studies, and we were always balancing line losses against freight rates on coal. It was a question of how much loss we could sustain in the transmission of energy and still do a more economical job than paying freight on coal, to send the Kilowatt hours down

(Mr. Benson) Q. Do you have the subpoena that was served on you by the—was a subpoena served on you by the defendant in this case? A. No, sir.

Q. What? A. No, sir.

Plaintiff's Exhibit 59, which was received in evidence and is referred to also in White's deposition as Exhibit 66 therein, reads as follows:

Plaintiff's Exhibit 59.

February 6 9

Production Statistics

Northwestern Public Service Co., Northern Power & Light Co. and North Dakota Power & Light Co.

J. H. Buell & W. R. Gazin:

O. C. Stokke.

Enclosing copies of graph sheets showing annual net KWH outputs, and unit production costs of the respective companies and of the combined systems of the three operating companies.

Operating as we do, in the interconnected system with North and South Dakota, on the basis of a socalled "power pool", we have endeavored to operate at lowest possible operating costs, taking into consideration thruout each year, (a), the most economical production costs of the several stations, (b), the location of generating station and transmission distances, which involve line losses and ultimate delivered cost of transferred or delivered energy, and (c) the reliability of service thus available to all communities of the respective companies in the North and South Dakota Power Pool.

To insure such reliability of service it becomes necessary at most periods to operate the several most efficient and low cost fuel station generating units, and to take care of peak periods with standby diesel generating units and most responsive and efficient steam turbo-generators, at various

plant locations, thereby avoiding excessive loading on substation equipment and transmission lines.

During the past year, we find that the principal steam stations show an increased output and the diesel stations a decrease in output. Economies were obtained to some extent by such dispatching of plant generation. The Knife River Station at Beulah shows a substantial increased output, totaling 41,170,000 KWH gross generation, an increase of 2,600,000 KWH output over the previous year. Aberdeen and Mitchell plants show increased output in 1938 over previous year. No energy purchased from hydro-plants in Nebraska during past year 1938. Generation by the Cody plant was increased proportionally due to 12 month full operation of 1938.

Unit Cost of fuel to the various plants shows some increased cost per ton, or per gallon, due to rising prices of coal and fuel oil. However, the unit fuel cost per KWH net generated has remained steady or with slight reductions in some stations.

Maintenance cost was held down to a reasonably low unit cost in spite of considerable repairs and replacements during the year. We are endeavoring to make essential repairs as required and feel that such work is necessary, regularly thruout the year. For the pending year of 1939, we will likely catch up on some deferred repainting jobs in the power plants. Housekeeping in all plants has been quite satisfactory as we observe this phase of operations.

The increased cost of maintenance shown in the maintenance graph for N. D. Power & Light Co. is largely due to extra maintenance costs in the Bismarck plant and to #1 boiler reconstruction in the Beulah plant.

Labor costs, in my judgment, are still satisfactory considering the labor laws and other things affecting labor relations between company and employees. The management of these three operating companies has taken care of all wage matters in due course of time and with upward adjustments in salaries wherever justified.

As reported to you previously we would estimate that the power plant properties, as a whole for each company,

are in about 85% condition—electrically, mechanically and structurally. General appearances we believe shows an improvement in the plant properties over the systems of the three companies.

We are looking forward to a visit this spring from Mr. Buell or Mr. Gazin. The middle of March should bring favorable traveling weather.

O. C. STOKKE.

OCStokke/t

Cc to A. B. Sanborn
S. W. White

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the fact that neither company had built any generation for the benefit of the other. We took two groups of companies, and lumped them together, so to speak, with such facilities as they had. We saw no justification for a power plant capacity charge between the two systems, either way, until such time as some company, either the Northwestern or the United Public Utilities Co., actually built a big plant for the benefit of both parties.

Q. Then in anticipation of such construction by one or another of these three operating companies, did you open negotiations and discussion with the owners of these companies [oncerning] a probable charge to be made for reserve capacity?

A. Yes, we determined, as I recall, the approximate cost of adding generating capacity in that area. My recollection is that it was about $125.00 a kilowatt. We set up a formula of fixed charges, taxes, interest and depreciation, on that type of investment, and said, in our recommendation, that $1.10 per kilowatt of capacity per month was a fair charge either way. In other words, if the Northwestern Public Utilities Co. was to build power facilities, one-half of which was for the benefit of the United Public Utilities property, that was the basis upon which you would allocate fixed charges. We had set up the mechanics for such an arrangement in our engineering studies. I do not remember whether it was ever reduced to writing in a contract, but there was a definite basis established. It is my recollection that Sargent and Lundy were studying capacities, and additional generating requirements, and where they should be located, at the time I left the property.

Q. In your power utility business and relationships, is a reserve capacity charge deemed a just and reasonable charge, in this company?

A. By all means, a reserve capacity charge is a justifiable charge, and in the industry a plan similar to that I have just outlined is in effect with all companies. We have it in effect out here in the Pacific Northwest—Reserve capacity is vital in any system. In other words, the interpretation of firm power is that power which you have with your biggest generating unit out of service, and that means that every system must have within its own confines re-

serve capacity, or available reserve capacity through interconnection with other companies, and the question in this particular instance, which I have previously testified to, was that we took the position that neither of these groups of companies, the Northwestern or the United Public Utilities, had built capacity for the benefit of the other, and so we took the condition as it existed and said, there shall be no distribution of fixed charges of reserve for that which existed at that time, but we set up the mechanics for the future, so that engineers could determine when and where it was most economical to put in additional capacity when it was required, and in that way we arrived at $1.10 per kilowatt month, or $13.20 per kilowatt year, of a capacity charge, that would work either way."

Mr. Fellows: This is cross examination.

"Q. Did you have a campaign on to get a franchise at Pierre, North Dakota, in 1936? A. We had no—

Q. I mean 1929.

A. We had no campaign particularly, we attempted to purchase the municipal electric light plant at Pierre—it was after '29.

Q. I wonder if your recollection is correct on that?

A. I could be off on that, but my remembrance is that it was after '29.

Q. Did you prepare any of the materials to be used in the attempt to purchase that property?"

Mr. Royhl: Objected to as incompetent, irrelevant, and immaterial; too remote, not within the issues in this case; incompetent for any purpose.

The Court: We will take the answer.

Mr. Royhl: May we have the same objection appear as to all examinations concerning Pierre transactions.

The Court: The general objection may stand.

"A. I do not recall whether I prepared it, whether I made any suggestions, I imagine it was prepared by our sales department, or publicity department, I couldn't tell without looking at it whether I did or not.

Q. Mr. Parker was President?

A. Mr. Parker would have been president. I wasn't made President until '37. I was Vice-President at that time.

Q. Mr. Parker's office was at Grand Island, not at your office?

A. Mr. Parker was originally in Huron, later moved to Omaha, about 1931 or 1932, and then was moved from Omaha to Grand Island.

Q. Was Mr. Parker maintaining his main office in Huron in May, 1929? A. My recollection is that it was.

Q. And in September, 1929? A. That is my recollection.

Q. Did you attend the meeting of the Mayor and the City Commissioners of the City of Pierre, May 6, 1929?

A. I can't tell you that.

Q. Well, were you there in April, 1929?

A. I can't tell you. I was around Pierre a lot of times, but what particular months or days, or what meetings—I took in a number of meetings with the Mayor and City Council, and other groups in Pierre.

Q. You do not recall what date you were in Pierre on this proposal to purchase their plant?

A. No, I don't recall what date I was there.

Q. You don't keep a diary? A. No.

Q. You didn't keep any diary?

A. I didn't and I don't today.

Q. Do you have a recollection of how you are going to serve Pierre if you bought the municipal plant, what the plan was?

A. Well, we were going to interconnect in with our system west of Huron, and I have forgotten whether we planned some generation equipment at Pierre. My recollection is that we planned to take over their plant, make some additions to it, and make it one of our generating stations on the system.

Q. You intended to tie in the system with Pierre?

A. Tie Pierre into the Northwestern Public Service Company system.

Q. And you would do that, as you said, west of Huron?

A. That is correct.

Q. So that the line would have been Huron, Highmore, Blunt—

A. Well, we were out as far as Highmore with a 33 K. V. line, and we had a 6.9 K. V. line from Highmore west to Harrold. We were that close to Pierre with our circuits at that time, and Blunt was a local direct current plant that was bought by the Northern Power and Light Company prior to the time that we acquired control of the property.

Q. Now you didn't desist after the adverse election in the fall of 1929?

A. I do not remember the date—we certainly did not desist, no.

Q. What steps did you take after the first election to try to get Pierre?

A. I do not recall any particular steps. We certainly were interested in purchasing the property if it could be acquired, but we never called for a second election.

Q. Can't you recall what you did in the way of communications with the city concerning attempts to acquire the property? That is, after the election in 1929?

A. I couldn't, without refreshing my memory from the files.

Q. How far were you, in miles, from Pierre?

A. I previously testified that our 33 K. V. line was at Highmore, and I would guess that Highmore was probably around 40 miles from Pierre.

Q. Did I understand from your testimony this morning that you said that when Mr. White became Receiver you thought that then the consolidation of the properties, of the Northwestern Public Service Company, the Northern Power and Light Company, and the North Dakota Power and Light Company, would be long delayed?

A. I testified that when the Middle West went into receivership, and the United Public Utilities, both of them in receivership, it then appeared to me that it would be of long duration, and that we had better make up our minds that the consolidation wouldn't go through for some time, if ever. You see, we had two separate holding companies, and two separate receiverships, separate receivers.

Q. Did you give up the idea then of a possible consolidation of those properties?

A. From our point of view, we always pressed the case,

via the coal route. Depending on how much energy we were trying to put through there, we would get those losses up as high as 33⅓ and 40 percent at times, just shoving it over those lines, and you could absorb those losses and still beat paying freight on the coal—ship it down to Aberdeen, and make your kilowatt hours there. Now the losses on the Northern system would vary, depending upon where the feed came from. If all energy came in from the North Dakota Power and Light end, over to Bismarck, you run into very high losses, because you had to feed clear down into the Ellendale and Mobridge areas, but if a part of that feed was coming off of the Northwestern, you were dividing that loss and you would have less losses on the system. There was quite a variation in Northern's losses. North Dakota Power and Light losses were rather comparable for the industry, but the losses on the Northern were higher than for the industry.

Q. You didn't draft any form of interchange capacity agreement between the companies?

A. The documents you have had marked as exhibits here today, I think I had my finger in the drafting of those agreements.

Q. You are talking about the interconnection facilities?

A. Yes.

Q. I had in mind the interchange capacity agreements?

A. No, I do not recall having had anything to do with the contract on that, because it wasn't a question at that time—it was coming into to intervene, but we hadn't really gotten into the question, because there was no emergency.

Q. When you make power contracts, for substantial use, you have something like a standby charge, or demand charge, in those contracts?

A. It depends upon the nature of the contract. In a firm power contract, you either embody it all in an energy rate, in the rate per kilowatt hour, or you have what is known as the two part rate, a demand rate, and an energy rate. Sometimes you put the kilowatt hours into the demand. In other words, you have a rate which might read $2.50 per kilowatt of demand, for which you will get 100 kilowatt hours per kilowatt, but, in answer to your question, it depends upon what you are selling, or buying, as the case may

be. In a firm power contract, you have a capacity charge, plus what we choose to call an energy charge, and that is the basis upon which these are made. Now to illustrate my point in connection with the subject matter here. As I have previously testified, we took the position that neither company had built for the other, in whatever they had, and therefore we made no capacity charge at the time we started this arrangement. The only charge we made was the energy charge, which was related to fuel costs, not the total production costs. While Aberdeen's fuel cost was 5.7 mills, the total production cost was probably 7.7 mills. So that was related to the fuel cost of the station.

Q. You expressed the opinion, as I recall, during your direct examination as to $13.20 being a fair demand charge. Is there some magic in the $13.20?

A. No. I qualified it by saying that it was based upon $125.00 investment per kilowatt of capacity, for which at that time we believed you could build on either the North Dakota, the Northern, or Northwestern.

Q. Where do you get the $13.20?

A. You take your fixed charges, taxes, interest, and depreciation, and as I remember it, it was 11 percent fixed charges, or 10½, or whatever it figured out, and we arrived at $1.10 per kilowatt month, which is $13.20 per kilowatt year, which is a capacity charge for which no kilowatt hours flowed. You pay for the kilowatt hours on the energy rate. So you really would have a rate of $13.20 per kilowatt of demand per year, or $1.10 per kilowatt of demand per month, plus 5 mills per kilowatt hour for the energy flowed through."

Defendant admitted in interrogatories offered and received in evidence that the $70,000 which it admitted receiving in paragraph XIII of its answer to the first cause of action of plaintiff's complaint was received by defendant under and pursuant to the terms of the original of Exhibit B attached to plaintiff's complaint.

Defendant admitted in interrogatories offered and received in evidence that the sums of $22,440 and $9,068.40, which the defendant admitted that it received in paragraph IV of its answer to the third cause of action in

plaintiff's complaint, were received by the defendant under and pursuant to the terms of the original of the contract of which a copy is attached to the plaintiff's complaint as Exhibit C.

Mr. Royhl: As a part of the testimony of Mr. Strike just read by counsel in plaintiff's case, we desire to place in the record the stipulation made at the request of the plaintiff at the time of the taking of the testimony, and which was as follows: "It is agreed that the witness, C. J. Strike, is ill with an ailment pronounced by his doctors as incurable, and his early demise is expected, which facts may appear of record herein without the necessity of developing the same by questions asked the witness."

The Court: It may be received.

Mr. Fellows: Your Honor, we are going to offer portions of the deposition of Samuel W. White, the deposition having been taken on September 17, 1947, and subsequent dates, said deposition be on file here with the Clerk.

I am reading from the [direction] examination of the witness by the defendant.

(From the deposition of Samuel W. White, read by Mr. Fellows:)

Q. Mr. White, it is alleged in the complaint in this action, and shown in or illustrated in Exhibit A to that complaint, that you were a director of North Dakota Power & Light Company and of Northern Power & Light Company during the calendar years 1935, 1936, and 1937 and 1938. It is also alleged that you were a director of Northern Power & Light Company until July 1, 1939, and of North Dakota Power & Light Company during all of that year, subsequently to July 1 that was then known as Dakota Public Service Company. It is also alleged you were a director of Dakota Public Service Company for the years 1940 to and including 1944, and during 1945 to October 19th. Were you a director on the boards of those companies during those years and periods? A. Yes.

Q. Now, during that period when those boards of directors met, was it your practice to attend the meetings?

A. No.

Q. I notice Mr. Sandstedt's letter is dated June 26, 1941. Did you have occasion to go over or inspect the Dakota properties prior to that date? A. Yes.

Q. And do you recall the approximate date of that visit?

A. Well, it was prior to June 17th, 1941.

Q. Some time in May or early June? The exact date is not material for my question. I just want you to fix it approximately.

A. It was not long prior to June 17th.

Q. Was there any particular purpose for making that inspection trip? A. Yes.

Q. I know that you previously testified you had made several inspection trips. I wondered if this one had any particular purpose?

A. This one was both a regular inspection trip, such as I have been accustomed to making from time to time, and it was also for general review of the operating system out there, with respect to two subjects in particular, namely the—first, the operation of the interconnected system, and second the possibility, to which I was giving consideration at that time, of recommending to my board the purchase by Dakota Public Service Company of the common stock of Northwestern Public Service Company.

Q. Did you have in 1941 a cottage at Detroit Lakes, Minnesota? A. Yes.

Q. During the fall of 1941 did you at any time have a conversation with Mr. Sandstedt regarding the subject matter of the proposed term contract between Northwestern Public Service Company and Dakota Public Service?

A. Yes.

Q. Do you recall when that conversation occurred?

A. Yes.

Q. Well, when was it, please?

A. Early in September of 1941, in my cottage at Detroit Lakes, Minnesota.

Q. Who was at that conversation besides you and Mr. Sandstedt, if anybody?

A. Mr. Karl Goldsmith, of Pierre, South Dakota.

Q. Who was Mr. Goldsmith, please?

A. Mr. Goldsmith was an attorney who represented both Dakota Public Service Company and Northwestern Public Service Company.

Page 451 is shown on
Card 11

Page 453 is shown on
Card 11

Page 455 is shown on
Card 11

Q. Now, Mr. White, referring to Exhibit 66, do I understand that this exhibit was written on or about February 6, 1939. A. Yes.

Q. At least you received it about that time?

A. Apparently, from the date on the letter.

Mr. Benson: Well, I only saw a 9.

The Witness: Yes, it refers, however, to data for 1938, the full year.

(Mr. Benson) Q. The J. H. Buell named in this exhibit is the same James H. and Major Buell you have talked about in your testimony? A. That is right.

Q. What was he doing in 1939, in February?

A. He was head of the engineering department of Middle West Service Company, of which our Dakota subsidiaries were a client.

Q. Who was W. R. Gazin?

A. W. R. Gazin was an engineer in Mr. Buell's department and under Mr. Buell in authority and rank.

Q. He had been there continuously since when?

A. About January or February, 1935, according to my recollection.

Q. Referring to Exhibit 66 for identification, what was the longest period of time you spent on the properties of North Dakota Power & Light Company and Northern Power & Light Company and Northwestern Public Service Company at any one time? A. Five days, approximately.

Mr. Royhl: Let the record show this is Mr. Benson's cross examination.

(Read by Mr. Fellows.)

Q. Now, are you an engineer? A. No, sir.

Q. In 1939 were you familiar with the engineering records of the company so that you can give us in detail what constituted the engineering records of the North Dakota Power & Light Company? A. No sir.

Q. Or Northern Power & Light Company? A. No sir.

Q. Or Northwestern Public Service Company?

A. No sir.

Mr. Fellows: Examination by Mr. Stafford.

Q. Did you ever discuss or do you recall ever discussing with anyone, any operating personnel, or on the properties, preliminary figures similar to the figures which actually went into a load diagram, on any occasion? A. No.

Plaintiff's Exhibit 60, which was received in evidence, is referred to also as Defendant's Exhibit 74 in White's deposition and the last paragraph of page 4 and the first paragraph of page 5 read as follows:

Effective September 1, 1933, your Receiver has cancelled the contract under which his three receiverships paid a fee aggregating $25,000 a year to the Receivers of Middle West Utilities Co., for the services of their staff, in connection with the accounting of holding companies under his direction and technical assistance in the supervision of operations of subsidiaries. In lieu of this contract, arrangements cancellable by either party on short notice have been made, whereby, for a total fee of $6,000 a year, the accounting and most of the statistical work of these receiverships is done by employees of Middle West Utilities Co., while technical assistance to your Receiver in supervising the management of the operating subsidiaries is paid for by those subsidiaries (as it properly should be), at the rate of ¾ of 1% of operating revenues, excluding sales of merchandise, coal, steam-heating, transportation, and all inter-company sales or sales to other units of Middle West Utilities Co.

The current effect of this change is to increase the total payments to Middle West Utilities Co. by companies in the United Public Service System, in an aggregate annual amount of about $19,300 above the total fee of $25,000 previously paid. It is the opinion of your Receiver, however, that under this revised arrangement, the total cost of services received is substantially less than the cost would be for him to maintain a competent central organization of his own, to accomplish the necessary direction of the business of the System.

Q. I show you now a document marked Defendant's Exhibit 74 for identification, purporting to be a copy of the third report filed by you as receiver, with the District Court of the United States, for the Northern District of Illinois, Eastern Division, in an action entitled Howard J. Umland, Complainant, versus United Public Service Company, a corporation, of New Jersey et al., Defendant, in Equity, No. 11652, and I will ask you to examine the same and state whether or not that is a true, accurate and correct copy of the said report filed by you?

A. That is a printed report in the same form as the printed report that was filed with the Court, except that the signatures have been conformed.

Q. Did you file it on or about the date of this report, to-wit: May 31, 1934? A. Yes.

(Read by Mr. Fellows.) (Questions by Mr. Stafford.)

Q. Now, Mr. White, how long did you continue those arrangements between the receivers of Middle West Utilities Company and the operating subsidiaries of the companies of which you were then receiver? Was it through the balance of your receivership?

A. Through the balance of my receivership, I continued the arrangement for $6,000 a year—

Q. Yes.

A. (Continuing) —for the three holding companies of which I was receiver. For the subsidiary companies I retained the arrangement under which the subsidiary companies paid a fee directly to the receivers of Middle West Utilities Company throughout the remainder of the receivership of Middle West Utilities Company. United Public Utilities Corporation—

Q. I was coming to that. Now, you mentioned, beginning January 1, 1935, United Public Utilities Company receivership was terminated, and United Public Utilities Corporation took over its assets and commenced business. Is that right? A. Yes.

Q. And what were the arrangemennts between United Public Utilities Corporation or the subsidiaries thereof, namely, the Dakota subsidiaries, in connection with the arrangements which you have just described? Specifically, were they continued or were they changed?

A. Beginning with the entry of United Public Utilities Corporation into business, on January 1, 1935, I had an arrangement between United Public Utilities Corporation and either the trustee of Middle West Utilities Company or the receivers of Middle West Company.

Q. Whichever was then operating?

A. Whichever was then operating; Under which United Public Utilities Corporation paid a fee of $5,000 a year for accounting and statistical services. As previously testified, I made no change in the arrangement between the receivers—between the subsidiaries of United Public Utilities Corporation until the receivership and the trusteeship of Middle West Utilities Company was terminated, and that company was reorganized into the Middle West Corporation on November 27, 1935. When Middle West Service Company started business on January 30, 1936, the arrangement for the services which had been performed by Middle West Utilities Company for United Public Utilities Corporation—

(Mr. Stafford) The receivership and trusteeship, to keep the record straight.

(The Witness) Receivership and trusteeship of Middle West Utilities Company, yes, were transferred over to Middle West Service Company for the same consideration, and also after that time the supervisory and advisory services which had previously been rendered to the operating subsidiaries of United Public Utilities Corporation by the receivers or trustee of Middle West Utilities Company—will you read that? I have lost myself.

Mr. Royhl: All of this testimony is objected to, concerning the holding corporation, as not within the issues in this case; there being no fraud predicated upon any action except the actions of the individuals composing the board of directors of the associated companies, and the charge being fraud of interlocking officers and directors, and not the fraud of the holding corporation or the service corporation.

The Court: Objection overruled.

Mr. Royhl: May the same objection be shown—

The Court: The record may show the same objection with the same ruling to all of this line of testimony.

A. (Continuing) —were contracted for from Middle West Service Company by the subsidiaries of United Public Utilities Corporation, at a cost which, to the best of my recollection, varied slightly from the [thre-quarters] of one per cent charge previously made.

(Mr. Benson) Eight-tenths.

(The Witness) That amount was eight-tenths of one per cent, beginning in January, 1936.

(Mr. Stafford) Q. You say they were contracted for by the operating subsidiaries. By that do you mean that the operating subsidiaries entered into formal contracts with Middle West Service Company calling for those services at that rate?

A. Yes, each of them.

Q. And that was true with reference to the Dakota subsidiaries of United Public Utilities Corporation?

A. It was true to the same extent that such arrangements had existed prior to the reorganization—prior to the organization of Middle West Service Company.

Q. Did North Dakota Power & Light make such a contract?

A. Yes.

Q. And did Northern Power & Light make such a contract?

A. Yes.

Q. How about Knife River Coal Mining Company?

A. It made no such contracts, nor had it had such a contract prior to the formation of Middle West Service Co.

Q. Were the contracts made by North Dakota Power & Light Company and Northern Power & Light Company with Middle West Service Company submitted to the board of directors of United Public Utilities Corporation?

A. Yes.

Q. Now, Mr. White, having read that portion of the minutes, does that refresh your recollection as to whether or not at that meeting the contracts between North Dakota Power & Light Company and Northern Power & Light Company and Middle West Service Company were sub-

mitted to the board and included within the resolution as stated in the minutes.

A. It does.

Q. Were they so included?

A. Yes.

Q. Was that resolution adopted, do you recall?

A. Yes, it was.

Q. Do you recall the terms of those contracts of Middle West Service Company with the two Dakota subsidiaries?

A. Yes.

Q. Will you tell us what they were?

A. You mean the contracts as originally—

Q. These contracts we have just been talking about, between North Dakota Power & Light and Northern Power & Light and Middle West Service Company.

A. The contracts provided for the Middle West Service Company to render the supervisory and advisory services outline in the contracts.

Q. No, I don't mean terms. I mean the duration of the contracts. Were they about a year?

A. Pardon me.

Q. No, I don't mean the provisions.

A. In effect they ran until cancelled, on—

Q. 90 days? I think the minutes state 90 days.

A. 90 days' notice.

Q. Did you approve those contracts, Mr. White?

A. Yes sir.

Q. And did you instruct the two Dakota subsidiaries or the officers thereof to enter into them?

A. I had previously consulted with the chief executives of each of the operating subsidiaries of United Public Utilities Corporation as to the desirability of those contracts from the standpoint of their companies, and had been advised by each of the subsidiaries that they—each of the management of the subsidiaries, that they wanted to arrange for the service of Middle West Service Company, except that the management of Knife River Coal Mining Company recognized no need for the services, and therefore when the contracts were submitted I sent them to each of the operating subsidiaries, including North Dakota Power & Light and Northern Power & Light, and excluding Knife River Coal Mining Company, together with a request that they be executed by the operating subsidiaries.

Q. You said you consulted with the operating management, the heads of the operating subsidiaries. Did you mean to include there operating subsidiaries in addition to North Dakota Power & Light and Northern Power and Light?

A. Yes.

Q. And the managing heads of those operating subsidiaries informed you they desired the services of the Middle West Service Company?

A. That is correct.

Q. And also, I take it, the operating personnel and heads of the North Dakota Power & Light and the Northern Power & Light at that time also stated that they desired to continue those services?

A. That is correct.

Q. Mr. White, the 1936 interconnection contract, Exhibit B to the complaint, bears the date October 7, 1936. Was that contract executed on or about that date, if you know?

A. Yes.

Q. And did you know of its execution and approve the same? A. Yes.

Q. Mr. White, I will show you a document marked Defendant's Exhibit 20 for identification, consisting of three pages, the first of which purports to be a copy of a consent and waiver of notice to a special meeting of the board of directors of Northern Power & Light Company, dated October 7, 1936, the remaining two pages purporting to be a carbon copy of the minutes of that special meeting of that board of directors, held on the same day. I will ask you whether you have produced that document for me from your files, at my request? A. Yes.

Q. From whom did you receive this carbon copy?

A. From the secretary of Northern Power & Light Company.

Q. And it has been in your files since your receipt of it?

A. Yes.

Plaintiff's Exhibit 61, which was received in evidence, is also referred to as Defendant's Exhibit 20 in White's deposition and reads in part as follows:

Plaintiff's Exhibit 61.

Northern Power and Light Company.

Minutes of a special meeting of the Board of Directors of Northern Power and Light Company, held at the office of the Company, National Bank of Huron Building, Huron, South Dakota, on Wednesday, October 7th, 1936, at 11:00 o'clock A. M.

There were present:

Messrs. F. E. Kruesi
C. J. Strike
C. L. Sandstedt

There were absent:

Messrs. M. C. Blackstun
S. W. White

The Chairman stated that at the Annual Meeting of the Board of Directors held on April 22nd, 1936, a resolution had been passed approving, ratifying and confirming the action of the officers in executing an agreement for the interchange of power between Northwestern Public Service Company and Northern Power and Light Company, dated April 22nd, 1936.

Upon motion duly made and seconded, it was unanimously

Resolved: That the resolution referred to above in regard to the agreement for the interchange of power be and it hereby is rescinded.

The Chairman then presented to the Board an agreement dated October 7th, 1936, for the interchange of power between Northwestern Public Service Company and Northern Power and Light Company.

Upon motion duly made and seconded, it was unanimously

Resolved: That the action of the officers in executing the agreement dated October 7th, 1936, for the interchange of power between Northwestern Public Service Company and Northern Power and Light Company be and the same hereby is fully and in all respects approved, ratified and confirmed.

The earnings statement, balance sheet and work order reports for the month of July and August, 1936, were presented and read and upon motion duly made and seconded these reports were approved and it was ordered that they be filed with the records of the Company.

Plaintiff's Exhibit 61-A, which was received in evidence, consists in part of the following:

Plaintiff's Exhibit 61-A

12/14/36—Mr. White suggested that we file the attached—
(Nothing has been done about it).

M. MILLER.

Northwestern Public Service Company

For Company Business Only

Date May 12, 1936.

Subject Waiver of Notice

Location Northwestern Public Service Company

To S. W. White

From C. L. Sandstedt

Please sign and return the enclosed Consent and Waiver of Notice for Northern Power & Light Company and North Dakota Power & Light Company.

C. L. SANDSTEDT.

f.
Encl.

Northern Power and Light Company

Annual Meeting of the Board of Directors

Consent and Waiver of Notice

We, the undersigned, being all of the Directors of Northern Power and Light Company, a Delaware corporation, do hereby waive notice of the time and place for holding the annual meeting of the Board of Directors of said corporation, and do consent to holding of said meeting at the office of the Company in the City of Huron, South Dakota at 10:30 o'clock A. M., on Wednesday, April 22nd, 1936, for the purpose of electing officers of the Company and transacting any other business which may be taken up at this meeting.

Dated April 22, 1936.

C. L. SANDSTEDT,
C. J. STRIKE,
F. E. KRUESI,
M. C. BLACKSTUN.

Northern Power and Light Company

Annual Meeting of the Board of Directors

Minutes of the Annual Meeting of the Board of Directors of Northern Power and Light Company, held on April 22, 1936, at 10:30 o'clock in the morning, at the office of the Company, National Bank of Huron Biulding, Huron, South Dakota.

There were present:

Messrs. F. E. Kruesi
C. L. Sandstedt
C. J. Strike

There were absent:

Messrs. M. C. Blackstun
S. W. White

The Chairman presented to the Board an agreement dated April 22, 1936, for the interchange of power between

Northwestern Public Service Company and Northern Power and Light Company.

Upon motion duly made and seconded, it was unanimously

Resolved: That the action of the officers in executing this agreement be and the same hereby is fully and in all respects approved, ratified and confirmed.

The earnings statement, balance sheet and work order reports for the months of February and March, 1936, were presented and read and upon motion duly made and seconded these reports were approved and it was ordered that they be filed with the records of the Company.

(Read by Mr. Fellows)

Q. Do you know what N. P. Zech's office was with Middle West Corporation?

Mr. Royhl: Objected to as incompetent, irrelevant and not the best evidence.

The Court: The question calls for the knowledge of the witness. Overruled.

(Mr. Benson) Q. Wasn't he comptroller?

A. He was comptroller of the service company, and I believe that he was comptroller of the old Middle West Utilities Company. He came in shortly after the receivership, the Middle West Utilities Company was brought in by the receivers.

Mr. Royhl: This is cross examination.

Q. Mr. White, I am looking at the minutes of a regular meeting of the board of directors of United Public Utilities Corporation, held at 1335 Land Title Building, Philadelphia, Pennsylvania, on August 1, 1940, at 10:00 o'clock a. m. This begins on the second page and extends over onto the third page. Pursuant to the stipulation made, I will read the following:

"The president read a letter outlining an agreement for sharing the expenses of the Wilmington office between the

following companies: The Middle West Corporation, Central and Southwest Utilities Company, American Public Service Company, North West Utilities Company, United Public Service Corporation, United Public Utilities Corporation.

"In accordance with this arrangement, 15% of the joint expenses will be charged to United Public Utilities Corporation. It is estimated that United Public Utilities Corporation's share of these expenses will amount to about $3,850 annually. On motion duly made and seconded the agreement was approved and the letter ordered filed with the minutes."

I will ask you to look at the documents I have in hand, and state for me whether what I have read is in the original minutes of the directors of United Public Utilities Corporation for the date that I have stated.

Mr. Fellows: It is offered in evidence and objected to.

Mr. Royhl: To which the defendant objects for the reason it is incompetent, irrelevant and immaterial; not within the issues in this case; there being no fraud charged against anyone except the interlocking officers and directors; hearsay.

The Court: Received.

(Read by Mr. Fellows)

Q. Central & Southwest Utilities Company referred to in the portion of the minutes which I read was at that time a subsidiary of The Middle West Corporation?

Mr. Royhl: Same objection in full.

The Court: Same ruling.

A. It was a holding company, in which Middle West owned over 50 per cent, at least two classes of stock; yes.

Q. What was American Public Service Company?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. That was a holding company that owned some stock of one of the southwest operating companies. I don't re-

call whether it was a subsidiary of Central & Southwest Utilities Company or of Middle West, but I believe in any event it would be called a sub-holding company, subsidiary of Middle West.

Q. It was affiliated in some way with the Middle West Corporation? A. Yes, very closely.

Q. North West Utilities Company was also a subsidiary of The Middle West Corporation? A. Yes.

Q. And you have heretofore testified as to the status from time to time of United Public Service Corporation and United Public Utilities Corporation, I think? A. Yes.

(Mr. Stafford) Q. Do you know Mr. Frank Kruesi? A. Yes.

Q. And did you know Mr. Kruesi in the latter part of 1933 or in January of 1934? A. Yes.

Q. And directing your attention to that period, was Mr. Kruesi at that time an officer in any capacity for either North Dakota or Northern, if you recall?

A. Yes, he became president of North Dakota and Northern and Northwestern and Knife River Coal Mining Company in June, 1933.

(Mr. Benson) Q. North Dakota, Northern, Northwestern and Knife River in June when? A. 1933.

Mr. Benson: I think I heard you say Frank Kruesi.

Mr. Stafford: I understand that's his name.

Mr. Benson: He has a middle initial.

The Witness: E.

Mr. Benson: So it sometimes appears on the record as Frank and sometimes F. E. Kruesi?

Mr. Stafford: I think so, yes.

(Mr. Stafford) Q. In other words, Frank Kruesi and F. E. Kruesi is one and the same person?

A. That is correct.

Q. Do you recall, Mr. White, whether you ever requested Mr. Kruesi to check the arrangement under which the electrical energy was interchanged between North Dakota, Northern and Northwestern? A. Yes.

Q. And do you recall about when that was?

A. Just before he went out there to become president of those companies I asked him to check with special care on all intercompany relationships.

Q. And do you recall whether or not he rendered any report to you as to the results of that check?

A. No, he rendered no report that I can recall; but I visited those properties and went over them, [accompanies] by Mr. Kruesi, and we discussed on those trips the operations and the intercompany relationships, including the joint management arrangement.

Q. When would you place the time that you made this trip with Mr. Kruesi over the properties?

A. In that interval from 1933 up to about 1944 or 1945.

Plaintiff's Exhibit 63, which was identified and produced by White, was received in evidence, and is also referred to as Defendant's Exhibit 5 in White's deposition. It reads as follows:

Plaintiff's Exhibit 63

Northwestern Public Service Company

For Company Business Only

Date January 4, 1934.

Subject Interchange Of Electric Energy.

Location————————

Mr. Samuel W. White.

I have checked the arrangement under which the electric energy is interchanged between North Dakota Power and Light Company, Northern Power and Light Company, and Northwestern Public Service Company and I am satisfied that the present arrangement is fair to all three companies. North Dakota Power and Light Company and Northern Power and Light Company are [benefitted] by the arrangement. I think it can be said that Northwestern Public Service Company is not receiving any material benefit.

I also have checked the prices under which Northwestern Public Service Company is purchasing coal from the Knife River Coal Mining Company and believe it to be a fair price under present conditions. Northwestern is paying Knife River as high a price as they can without penalizing the company over what they could buy competitive fuel at. It is very much to Knife River Coal Mining Company's interests that Northwestern Public Service Company continue to buy this coal.

Yours very truly,
F. E. KRUESI.

FEK/B

C. C. To Mr. Geo. A. Mills.

Q. Looking at the document, refreshing your recollection from the document, do you now have a present recollection as to whether Mr. Kruesi did advise you with reference to the fairness of the arrangement between the three companies? A. Yes.

(Read by Mr. Fellows)

Q. You say that the signature at the bottom of this document is F. E. Kruesi?

Mr. Royhl: This is by Mr. Benson. A. Yes.

Q. On January 4, 1934, do you know what Mr. Kruesi's official position was insofar as Northwestern Public Service Company was concerned? A. He was president of it.

Q. And you said something about asking him to examine into the situation as to the Dakota properties before he went out to Dakota to become president of these properties, I think. A. Yes.

Q. Now, what was his employment at the time, that you had in mind, when you said you spoke to him before he went out to North Dakota to become president?

A. He was vice-president of Middle West Utilities Company.

Q. This document, Exhibit 5, says down in the lower left hand corner, "c.c. to Mr. George A. Mills." Do you know

the meaning of the letters "c.c."? That means "carbon copy" does it? A. I would assume so, yes.

Q. Did you know George A. Mills? A. Yes.

Q. Who was George A. Mills?

A. He was connected with Middle West Utilities Company in connection with the—his function was to supervise and advise on operations of operating companies, which the U. P. U. subsidiaries were part. His duties were as a sponsor of a certain group of operating companies, including the companies in the U. P. U. system.

Q. You mean the Middle West Utilities Company had utilities all over the country owned directly or indirectly through various subsidiaries and sub-holding companies, and they divided the territory up and gave a group of utilities to one man to supervise, like Mr. Mills had in your case, and other men in other situations, is that it?

A. That's correct.

Q. I see. They reported to official of Middle West Utilities Company?

A. In this particular case Mr. Mills reported to me on the operations of our companies.

Q. Did he report to anybody representing Middle West Utilities Company? A. That I cannot say.

Q. You don't know. He was working for them. You were not paying him anything.

A. No, not directly. I was paying for his services.

Q. Well, you mean under a service agreement— A. Yes.

Q. (Continuing)—with the receivers of Middle West Utilities? A. That's right.

Q. The service agreement you have heretofore described?

A. Yes.

Q. And did Mills only have your properties under consideration? A. No. He had other companies.

Q. What other companies?

A. That I don't know. I know that he had other companies.

Q. Did he have Northwestern Public Service Company under his jurisdiction? A. I am very sure that he did.

Q. Did he report to you on Northwestern Public Service?

A. No.

Q. And to whom did he report on that company?

A. That I cannot say.

(Mr. Stafford) Q. Mr. White, you testified that Mr. Kruesi became president of North Dakota and Northern Power & Light in June of 1933. Was he also president of those two companies on January 4, 1934? A. Yes.

(Mr. Robinson) Q. Mr. White, during the year 1936, and particularly prior to the end of June of 1936, did you cause any other engineering studies to be made of the properties of Northern Power & Light Company or North Dakota Power & Light Company?

A. I authorized such a report to be ordered.

Q. By "report" you mean an engineering study?

A. An engineering examination, study and report.

Q. Who did you authorize to cause such a study to be made?

A. The president of North Dakota Power & Light Company and Northern Power & Light Company.

Q. Do you know whether such a study was made?

A. Yes, it was.

Q. Did you receive copies of such a study? A. Yes.

Q. Who made such a study?

A. Sargent & Lundy, Chicago.

Q. What was the purpose of the study that you caused to be made at that time?

A. To determine the position of North Dakota Power & Light Company, Northern Power & Light Company, and Northwestern Public Service Company, with respect to the then current generating capacities and the probable needs and the recommended location of additions to the generating capacities of those companies to take care of foreseeable demands.

Q. Mr. White, do you know who Sargent & Lundy are?

A. Yes.

Q. Who are they, please?

A. They are an engineering firm, with offices in Chicago, that have specialized in power plant design and construction for utility companies.

Q. Did Sargent & Lundy give you a written report or an oral report?

A. A written report, also an oral report in advance of the written report.

Q. Was that oral report given to you on June 26, 1936?

A. That date is approximately correct because it was immediately prior to my departure for Philadelphia, for my directors' meeting.

Q. Well, on or about that date that oral report was given to you, in a conversation, do you recall who was present at that conversation?.

A. I believe that conversation is of record in my correspondence.

(Mr. Benson) Q. Now, will you produce the Sargent & Lundy report?

You have just handed me a document, bound in heavy board paper, with the name of Sargent & Lundy, Incorporated, engineers, Chicago, Illinois, in the lower right hand corner of the front heavy paper cover? A. Yes.

Q. Attached to that report is a statement contained on two sheets of paper, the first one of which looks like a letterhead and bears the name "Sargent & Lundy, Incorporated, Engineers, Chicago, Illinois" in the middle of the top of the page? A. That is correct.

(Mr. Benson) In your testimony or during the taking of your evidence counsel for the defendant called attention to the minutes of the regular meeting of directors of United Public Utilities Corporation held June 30, 1936. I will ask counsel to produce those minutes.

Plaintiff's Exhibit 64, which was received in evidence and is also referred to as Plaintiff's Exhibit 4 in White's deposition, consists of a study of Sargent & Lundy, Incorporated, under date of June 29, 1936, showing the comparative costs of gas versus coal for the proposed installation of additional generating facilities at the Bismarck power station of North Dakota Power & Light Company.

Plaintiff's Exhibit 65, which was received in evidence and is also referred to as Plaintiff's Exhibit 5 in White's deposition, reads in part as follows:

Plaintiff's Exhibit 65.

Sargent & Lundy
Incorporated
Engineers
Chicago, Illinois

Report SL-391
Job 876

Report
on
Proposed Increase in
Generating Capacity
for the
North Dakota Power and Light Company
By
Sargent & Lundy, Inc.
June 26, 1936

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Introduction, Summary & Conclusions

In accordance with Mr. O. E. Stokke's request we have made a careful study of your power situation in order to determine if added capacity is required at this time, and if so where such additional capacity should be located and what size units should be used.

You will note from Exhibit 2 that the peak hour demand on your system last December was 6285 kw and that the cold weather effective capacity was 8870 kw, leaving a excess of 2585 kw. Also that the Northern Power & Light Company's peak was 3150 kw with an effective capacity of 1865 kw, leaving a deficiency of 1285 kw, and that the two companies had a peak of 9435 kw with an effective capacity of 10,735 kw, leaving an excess capacity of 1300 kw. It is necessary to include the Northern Power & Light in this picture as this company is being supplied largely with power from your generating stations. We have also considered the available capacity and the load of the Northwestern Public Service Company all of these three systems being interconnected by high tension transmission lines, but Northwestern Public Service Company's power stations are located far away from the load centers on your system and those of Northern Power & Light Company.

Also the fuel costs of the plants of the Northwestern Public Service Company are considerably higher than those of your plants so that [is] is uneconomical to transmit any appreciable amount of power from the south to your system. It seems to us that the transmission system will be used primarily for reserve on the various load centers and for local distribution.

It is difficult to predict accurately the probable load increase on your system as the recent depression has made such prediction very unreliable, but it should be noted that the kw-hr output from your plants in 1935 was 34,772,000 kw-hr and in 1934 30,475,000 kw-hr, showing an increase of 14.2%. For the Northern Power & Light Company this increase was 69%, for the Northwestern Public Service Company 6.6%, and for the three companies combined, 11.8%.

From the above it is apparent that additional capacity should be provided as soon as possible in order to safeguard your power supply.

We have given consideration to four possibilities of increasing your system capacity as follows:

Scheme	Addition	Capacity Added	Invest. Cost	Cost of Power Produced Mills/kwh	Fuel Cost Mills per kwh
A	750 hp boiler at Beulah Station ...	1000 kw	$141,250	5.92	3.01
B	New 750 hp boiler & 4000 kw turbine at Bismarck Sta..	4000 kw	397,400	6.01*	1.42**
C	New 600 hp boiler & 3000 kw turbine at Bismarck Sta..	3000 kw	344,850	5.52	1.395**
D	New station on Missouri River...	3000 kw	399,275	7.74*	3.01*

* @ 2000 kw average load.

** Only 15% of steam for 9 mos. operation chargeable to power.

Scheme "A" covering a new boiler in the Beulah Station is not desirable at this time as this boiler would not increase the available capacity of the system, but would merely permit you to increase the kwh output from the Beulah Station. As we see it, it is capacity that you require rather than kwh output.

The Beulah Station is located practically at the Northernmost end of your system and most of the power from the station must be transmitted over high tension transmission lines to Bismarck and other points south. For large outputs the transmission line losses are appreciable and there is also the possibility that the transmission lines from this station may be out of service. This would cripple your system seriously.

In Schemes "B" and "C", we have considered adding capacity in the present Bismarck Station, Scheme "B" being based on a 4000 kw turbine, Scheme "C" on a 3000 kw turbine, each provided with a suitable sized boiler; the turbines being of the automatic extraction condensing type to take care of the steam heating system in the City of Bismarck. It will be noted from Exhibit 2 that the City of Bismarck and Mandan are pretty close together being approximately six miles apart. These two cities had a peak load last year of 3,075 kw, which is approximately ½ of the peak load on your entire system. It would therefore appear very desirable to provide additional capacity at Bismarck in order to safeguard this important load center. The principal objection to additional capacity in the present station at Bismarck is lack of circulating water and dust and cinder nuisance from the stack gases; this station being located very close to the business center of the City.

It appears possible that sufficient deep well water might be made available for the condenser. If not it will be necessary to install cooling towers. Suitable arrangement can be made to reduce the nuisance from the stack gases to a minimum, either by installation of a high stack or by suitable cinder catchers. With the arrangement above outlined the objections to locating new capacity in the present Bismarck Station will be reduced to a minimum.

We have also considered building a new station on the Missouri River about two miles from the present station. The cost per kw on the new station would be considerably more than the cost per kw of added capacity in the present station, as indicated by the above tabulation. Furthermore, it would be necessary to have a complete operating personnel duplicating the operating personnel in the pres-

ent Bismarck Station, which would have to run in order to supply the heating system as the new station would be too far away to supply heating steam. The new station would be somewhat more efficient because of the better vacuum due to ample supply of circulating water, but it would be necessary to operate the old Bismarck Station during the heating season, which would, of course, reduce the kw-hr output from the new station. When this is considered, a new unit in the present station would be more economical. In view of the above and also because of the uncertainty of the load growth we favor the installation of a new unit in the present Bismarck Station. This new unit would practically carry the present load in Bismarck and Mandan, leaving the old turbines (one 1000 kw and one 1250 kw unit) as reserve. These old units could also be used to take care of increased load in these two cities as well as the system, the new unit being a very good machine running condensing only, and under such conditions the old machine would take care of the heating system in good shape.

As to the size of the new unit in the present Bismarck Station it seems to us that a 3000 kw unit would be preferable to the 4000 kw machine because of the lower initial investment and also because as far as we can see a 3000 kw machine will take care of your requirements for some time to come and is better proportioned to the system load. We have gone into the matter of stability of the system somewhat and it is our feeling that the larger machine would not increase the stability materially and certainly would not justify the increased cost over the smaller machine.

We recommend that a 3000 kw unit and a 600 hp boiler built for 450 lb. pressure 750° total temperature be installed in the present Bismarck Station as soon as possible; the turbine and the boiler being installed together, which will reduce the cost of the installation to a minimum. In this connection we should state that the equipment and material prices are rising and there would be no advantage as we see it to defer the installation of the turbine until next year.

I. Load Situation.

In order to fully analyze your power problem, it is necessary to also consider the systems of the Northern Power & Light Company and the Northwestern Public Service Company, as these three companies are tied together into one transmission system and there is a great deal of interchange of power between them. The location and type of capacity available in each of these three interconnected system is shown below.

Operating Co. & Location	Installed Cap.—KW—Steam	Internal Combustion	Cold Weather Effective Capacity July 1, 1936	Remarks
North Dakota Power & Light Co.				
Beulah	6000		5800	
Bismarck	2710		1850	Heating sys.
Mandan	710		400	" "
Dickinson	500	724	1000	
Mott		240	200	
Northern Power & Light Co.				
Hazelton	0	0	0	
Lemmon		252	200	
Mobridge	1000		1,200	Bleeder type condensing—very good machine
Ellendale	425		200	
Gettysburg		150	140	
Northwestern Public Service Company				
Aberdeen	6500		6500	
Redfield	500		450	Heating system
Huron	200	1167	1300	
Mitchell	8250		6500	
Faulkton		116	50	
Highmore		180	140	
Webster		780		
Watertown	0	0		
Yankton	0	1604	1500	

The capacity and peak loads last December of the three systems are as follows:

	Cold Weather Effective Capacity KW	Peak Coincident Demand 6-7 PM—12/23/
North Dakota Power & Light Co...	8,870	6,285
Northern Power & Light Co.....	1,865	3,150
	10,735	9,435
Two Northern Districts Northwestern Public Service Co....	16,130	12,950
Total.....	26,865	22,385

From the above table it will be seen that the reserve on your system as of last December was 2,585 kw. On the Northern Power & Light Company there was a deficiency of 1,285 kw. Considering these two systems together the reserve was 1300 kw. The reserve on the Northwestern Public Service Company system was 3180 kw, and for the three companies 4480.

From Exhibit 2 it will be noted that with 10% annual increase the present stations of your Company and the Northern Power and Light Company will be loaded to capacity without reserve by 1937, and with 5% increase by 1938.

If one of the units at Beulah should be out of service, or even one of the boiler, it would be a serious matter for you to be able to carry the load. Considering the probable increase, even with all the stations on the three systems running at capacity except one of the 5000 kw units either at Mitchell or Aberdeen, you would find it difficult to handle the load.

The operating costs of the Beulah and Bismarck steam stations are much lower than the operating costs of the stations of the Northwestern Public Service Company because of the difference in fuel costs, and it therefore is uneconomical to transmit any appreciable amount of power from the south to your Company. Also the transmission lines are very long and the losses would be prohibitive.

From the above it is very evident that additional capacity must be provided as soon as possible.

II. Load Growth.

The net yearly power output by each of the three systems for the years 1934 and 1935 are as follows. (Less Nebraska Division and inter-company sales)

	1934	1935	% Increase 1935 over 1934
North Dakota Power & Light Co.....	30,475,000	34,772,000	14.2
Northern Power & Light Co.....	2,205,000	3,725,000	69.
Northwestern Public Service Co.....	38,117,000	40,640,000	6.6
Total	70,797,000	79,137,000	11.8
Average Load—KW.....	8082	9040	

Net output from Beulah and Bismarck Stations

	1934	1935
Beulah	26,090,200	29,971,120
Bismarck	3,763,230	4,199,540
Total	29,853,430	34,170,660

You will note from the above table that the power output in your plants was 14.2% greater in 1935 than in 1934. The increase for the Northern Power & Light Company was 69% and the Northwestern Public Service Company 6.6%. The total increase for the three companies was 11.8%. It should also be noted that the output from the Beulah and Bismarck Stations was about equal to the yearly power output for your system, and that by far the greater portion of your output was handled by the Beulah Station, which is your most economical Station.

It is difficult to forecast the probable increase in load on your system and it therefore appears to us that the expenditures for new capacity should be kept to a minimum consistent with adequate reserve. Exhibit 2 shows increase of peak load for 10 year period based on 5% and 10% annual growth as mentioned elsewhere in this report.

III. Schemes for Load Increase.

We have made the following studies as means of increasing the generating capacity for your systems.

A. Add a 750 hp bent tube type boiler at Beulah to bring up the available capacity of the plant approximately 1000 kw.

B. Install a 750 hp bent type tube boiler and a 4000 kw automatic extraction-condensing type of turbine in the present Bismarck Station.

C. Install a 600 hp bent tube type boiler and a 3000 kw automatic extraction-condensing type of turbine in the present Bismarck Station.

D. Construct a new station of 3000 kw capacity with one 600 hp boiler on the Missouri River about two miles from the present Bismarck Station.

IV. Scheme A—Boiler at Beulah Station.

The following is a list of the principal equipment in the Beulah Station:

1—2500 kw G. E. turbine 80% 2300 v. 3 phase, 60 cycle generator

1—3500 kw G. E. turbine 80% 2300 v. 3 phase, 60 cycle generator

2—750 hp B&W Stirling type boilers 250# ga, 175° superheat (185% rating maximum)

2—Harrington stokers per boiler

1—Badenhausen air heater per boiler

1—Sturtevant induced and one forced draft fan per boiler Link Belt coal conveyor and weigh larry

1—Double effect evaporator—Schutte & Koerting

2—Boiler feed pumps, one motor driven (150 gpm) and one turbine driven (250 gpm)

2—Exciters—one steam and one motor driven Coal bunker 65 ton effective capacity

At the present the boiler capacity at Beulah is only sufficient to develop 5800 kw on the turbine plant (installed capacity 6000 kw @ 80% P. F.). Records show that the power factor in the neighborhood of the Beulah Station is high and an additional output of 1000 kw could be obtained with another boiler. It is also to be noted that while fuel cost is low—10¢ per million Btu, the water conditions are unsatisfactory.

The addition of another boiler will provide adequate reserve against boiler outage. With one of the present boilers down only 3000 KW can be taken out of the plant. With a new boiler there will be no reduction of capacity due to boiler outage. However, there will be no additional capacity in kilowatts made available for peak loads since a turbine may be out of service. Added kilowatt hour can be obtained however and we estimate that 1000 KW more capacity or a maximum of 8,760,000 kilowatt hour can be made available.

In this connection it should be noted that the system lacks reserve in KW and not KWH since the capacity factor is low.

The addition of a boiler to the Beulah plant would unquestionably be the final construction at this site and the boiler should be arranged as shown in Exhibit 3. This will necessitate removing the east wall and building a boiler room extension. Also as shown in the cross section, it will be desirable to move the present coal bunker away from the boiler front to provide clearance for access to the front boiler tubes for cleaning. It is also desirable to raise the present fuel conveyor over the bunker to give adequate (24 hr) storage.

These changes would involve an investment cost as shown in Exhibit 4. The economics of the situation is shown in Exhibit 5, and indicates that the added capacity output can be obtained for 5.92 [mils] per kwh if the 1000 kw capacity be considered loaded 100% of the time, i. e., 100% capacity factor. This is not conclusive since the major load is down state and power must be transmitted toward Bismarck over high tension lines. Two lines are available; one, a #4/0 aluminum line and the other, a #6

copper line. At 15 per cent power loss and a p. f. of 80% at receiving end for 80 miles transmission over the copper line only some 500 kw can be transmitted, and over the aluminum line only some 5000 kw can be transmitted, without taking into consideration the stability of the system. In so far as the stability of the system is concerned the [located] of the new capacity at Bismarck would be much more advantageous than at Beulah.

To summarize this situation, it will not pay to bring up the capacity of the Beulah plant because this added capacity cannot be made available in the load district without excessive transmission losses.

V. Scheme B.

The following is a list of the principal equipment in the Bismarck Station:

1—1000 kw non-condensing G. E. turbine #13149

1—1250 kw bleeder type condensing G. E. turbine #27652

1—500 kw Lentz engine driven generator (may be run in emergency)

1—200 kw Buckeye engine driven generator (cannot be used)

1—600 hp Stirling type boiler (Blr. #7) and Badenhausen tubular air heater. Boiler built for 200 lb. but operated at 170 lb. ga. and 490° F. total temperature. Maximum rating possible is 225%

6—Franklin type boilers. Boilers 1 & 2 are rated at 480 hp together and may be used as a reserve for several years. Boilers 3 & 4 rated at 308 hp each are doubtful as the drum on No. 4 is cracked. Boilers 5 & 6 rated at 308 hp each have been condemned and can only be used to supply the heating steam.

1—Schutte Koerting 2-effect evaporating plant

1—Deep well pump for boiler and spray pond make-up. Well is 169 ft deep 8″ casing, and water level about

60 ft below ground level. Pump is set 140 ft below ground level. The well has been tested to 520 gpm with no appreciable draw down

1—Dual drive (motor and turbine) forced draft fan and one (1) induced draft fan also dual drive for the 600 hp #7 boiler.

There is only one good boiler in this plant (#7). The older boilers are held in reserve and run when #7 is out of service.

Another scheme is to install in the present Bismarck Station a 4000 kw automatic extraction and condensing type of turbine with one new boiler. This turbine would generate power and also supply the heating steam by extraction at one stage at a pressure of 6# ga. The pressure would be maintained constant irrespective of load variation by a suitable grid type of extraction valve. In order to obtain good economy the steam conditions would be 425# ga and 750° F at the turbine throttle.

The exhaust pressure on the turbine requires careful consideration. Since the Missouri River is about 1½ miles away river cooling water is out of the question. As a choice between cooling towers and deep wells we find that the cost of adequate capacity in either involves practically the same investment cost. Only 10° F to 15° F cooling is possible with a cooling tower placing a definite limitation on the possible vacuum.

From test recently conducted on the present deep well it appears possible to obtain sufficient condenser circulating water from deep wells. But it will be difficult to get rid of the condenser discharge water as the present city sewers may not be adequate and a new discharge flume or conduit to the river would be very expensive. This matter should however be checked into further.

We have based our calculations on an average of 2" Hg absolute exhaust pressure which can be obtained with a cooling tower.

The heating system demand is about 155,000,000 to 160,000,000 lbs. per year. It is not expected that this demand will be increased. The peak has been established at 55,000

#/hr. Based upon U. S. Weather Bureau records we have assumed a nine months heating season, corresponding to 25,000 #/hr. average extraction load on the turbine. With regard to the electrical load, the present load on the station averages only some 700 kw, and we have assumed that the new machine would be loaded up to at least fifty per cent capacity factor corresponding to an average load of 2000 kw. During the summer months the turbine would operate condensing with one extraction heater for feed water heating.

The plan of rearrangement for the new 4000 kw turbine and the new boiler is shown in Exhibit 6. Certain building changes are also involved for a condenser pit, pulling condenser tubes, and a new Chief Engineer's office. The investment cost of these additions is $387,400 as shown in Exhibit 7.

Several heat balances have been prepared showing the annual operating economy under various load conditions. For the greater portion of the year the turbine will operate at 2000 kw average load and 25000 #/hr extraction as shown in Exhibit 8. One stage of extraction at 6# ga for feedwater heating will improve the heat cycle and necessitate no additonal turbine extraction openings. For the balance of the year the performance will be in accordance with Exhibit 9. Another heat balance, Exhibit 10, shows the best possible heat rate on the plant when the unit is fully loaded, and no extraction for the heating system, the only extraction being for feedwater heating.

The cost of producing power under this scheme is shown in Exhibit 11, under which scheme power can be produced at 50% load for 6.01 [mils]/kwh.

In connection with this installation consideration must be given to the reduction of dust and cinder nuisance either by the construction of a high stack or the installation of suitable cinder catchers. Our estimate is based on a new stack but this matter will be further considered if the job is authorized.

VI. Scheme C

Another possible scheme is to install a 3000 kw automatic extraction turbine unit in the present Bismarck Station. This machine will take care of about 45,000 lbs of steam for the heating system and will produce 2300 kw. A desuperheater to reduce the superheat in the turbine extraction steam will produce an additional 4500# of steam to the heating system. The operating conditions would be the same as for the 4000 kw, namely 425# ga, 750° F total temperature and 2" hg abs exhaust pressure. The arrangement of this unit should be as shown in Exhibit 6, the turbine being located at the west end of the plant. Also it will be possible to operate this unit at 2" hg absolute pressure with approximately 1500 gpm of deep well water.

The investment cost of this unit and a 600 hp boiler is $344,850.00 as shown in Exhibit 12. Two heat balances for 2000 kw average load both for extraction heating and for straight condensing summer operation are shown in Exhibits 13 and 14. The summary of power costs for these conditions are shown in Exhibit 15, indicating an average cost of power of 5.52 [mils]/kwh. at 2000 kw average load.

VII. Scheme D.

New Power Plant on Missouri River Near Bismarck.

We have considered the desirability of building a new plant on the Missouri River near Bismarck. We investigated the site for such a plant on the east side of the Missouri River between the Northern Pacific Railroad bridge and the City of Bismarck Water Works. We think that this site would be quite satisfactory as the river bank is very well protected above the site of the bridge abutments. The main line of the Northern Pacific Railroad is running quite close to the site and there is also a good highway adjacent to it. Missouri River water at Bismarck is excellent for condenser service, the water being quite clear a good portion of the year with sufficient sand in the water to keep the condenser tubes clean at practically all times. We suggest that you consider buying this site for possible future use, as this site can no doubt be obtained at a very reasonable price at this time.

It appears to us that it is not advisable to build a new plant at this time as the investment cost would be considerably greater than making an addition to the present Bismarck Station. Also the boiler situation in the Bismarck Station is not entirely satisfactory as far as available capacity is concerned to the heating system.

We have considered a 3000 kw capacity plant which would fit into the present system demand very nicely. A station [new] Bismarck would also improve the stability of the system since the capacity would be nearer the load. Because the electrical interconnections provide adequate reserve in case of emergency, a unit plan with one boiler and one turbine is contemplated. The generator should be a 2300/4000 volt machine so that it will fit into the present electrical system. Initially if installed in the new station the generator can be operated at 2300 volts. Later the generator can be reconnected for 4000 volts, 3 phase, 4 wire if you decide to change or raise the distribution voltage. As shown in the electrical line diagram Exhibit 16, Fig. 16B the voltage would be stepped up at the new plant using the old 3000 kva transformer bank. The bulk of the new capacity could then be transmitted more directly and into the load district. At the same time it would be necessary to tie the new plant on the river to the present plant with two feeders or ties at generator voltage. These ties however would be limited in capacity to about 500 kva each. The proposed plant arrangement is shown in Exhibit 17. The coal handling will be simple as indicated, only a conveyor being necessary from the track hopper to bunker storage.

The operating conditions for this plant would be 425# ga and 750° F at the turbine throttle and a back pressure of 1" Hg in the condenser. To improve the heat cycle two stages of extraction are employed. The performance of the plant at 2000 kw average load and full load (3000 kw) is shown in Exhibits 18 and 19. The heat economy of this plant is better than that of a 3000 kw automatic extraction plant. As shown in Exhibit 20 the investment cost of this plant for the first unit is $399,275, or approximately $133 per kw and for the second unit $337,800 or $112.60 per kw.

In setting up figures for the cost of power from the new station we have assumed that because of its efficiency it

will carry an average load of 2000 kw. The operating costs have been drawn from comparison with other plants of similar capacity and operating conditions and the cost of power will be as shown in Exhibit 21.

In connection with this scheme the heating plant at the present Bismarck Station should also be put into first class operating condition, possibly with one additional deep well pump to supply circulating water for the 1250 kw bleeding condensing turbine. This will then take care of the local heating load and the new station will supply the necessary power to take care of load increase as well as provide an efficient base load station.

If this new station were built the present Bismarck Station would operate to supply steam to the heating system. The power output being secondary. Deep well water only could be used on the condenser for the 1250 kw unit by possibly some redesign of the condenser which would eliminate the nuisance of the spray pond. It would be necessary to arrange Boilers 3 to 6 inclusive to operate directly on the heating system (6# gauge) for emergency use in case boiler #7 is out of service. The operation under this condition would be as follows:

No power will be available from the plant.

A maximum heating system demand 55,000 #/hr.

Boiler No.	Boiler Rating HP	Output at Rating	% Rating to carry full heating System Demand
3	308	9240	150%
4	308	9240	
5	308	9240	
6	308	9240	
		36,960	

SARGENT & LUNDY.

Exhibit 5.

SL-391

Beulah Station

Yearly Cost of Power
From Added Capacity

Steam Conditions	250 lb ga—170° superht
Load on Unit #1	3000 kw
" " " #2	4000 kw
Water rate, Unit #1	12.85 #/kwh
" " " #2	12.0 "
Average weighted water rate	12.35 "
Auxiliary power (from oper. records)	8.5%
Average boiler efficiency	72%
Plant water rate	18.6 #/kwh
Plant heat rate	29,470 Btu/kwh
Steam required for 1000 kw load	13,600 #/hr
Equivalent fuel @ 7000 Btu/#	4,210 "
Cost of lignite in boiler room coal bunker	$1.43/ton

Yearly Production Power Cost

Output at 1000 kw average load		8,760,000 kwh/yr
Fuel cost per yr		$26,280
Labor		No additional labor necessary
Supplies .00026 × 8,760,000 =		2,280
Maintenance (new boiler)		1,500
		$30,060

Investment Cost

From Exhibit 4	$141,250	
Fixed charges @ 15%		21,190
Total yearly cost		$51,250

Total Power Cost/KWH 51,250/8,760,000	5.92 mills/kwh

(End of Portions of Plaintiff's Exhibit 65.)

Q. I show you the document marked Plaintiff's Exhibit 4 for identification, one marked Plaintiff's Exhibit 5 for identification, and ask you whether those two exhibits are the Sargent & Lundy report which was the final report which was to come, according to the minutes of the directors of United Public Utilities Corporation held June 30, 1936?

A. That is the same report mentioned in those minutes.

Q. You mean that is the final report you were expecting at the time of the meeting? A. Yes.

Q. Have you had any other reports from Sargent and Lundy any written reports in addition to Plaintiff's Exhibit 4 for identification and Plaintiff's Exhibit 5 for identification?

A. Not to my knowledge, and, if we have, they were not on that subject.

Q. You mean they were—

A. They were on isolated construction problems.

(Read by Mr. Fellows)

(Mr. Stafford) Q. I will refer you to the minutes of the regular meeting of the directors of the United Public Utilities Corporation, held in Philadelphia, Pennsylvania, on January 29, 1936, and I will further refer you to the tenth page of those minutes, and I point out to you that it is there stated: "The president reported that Northern Power & Light Company is building its Venturia-Ashley line at an estimated cost of $16,000 and an estimated saving in maintenance of $340.00 per annum; that Northwestern Public Service Company is asking for an annual payment to it by Northern Power & Light Company of $20,000 or $20 per annum for 1,000 KW firm power by way of return upon its investment of $340,000 made to serve Northern Power & Light Company;" I will ask you whether that refreshes your recollection as to the time and place as to which you referred this matter to your board of directors?

A. Yes.

Plaintiff's Exhibit 66, which was identified and produced by White and is also referred to as Defendant's Exhibit 45 in White's deposition, was received in evidence. It reads as follows:

Plaintiff's Exhibit 66.

Dakota Public Service Company
General Offices
Huron, South Dakota

June 26, 1941.

Mr. Samuel W. White, President
United Public Utilities Corporation
20 North Wacker Drive
Chicago, Illinois

Dear Mr. White:

I have been out of town almost continuously since I last discussed with you the interconnection agreement and I

have just gotten around to working up a revision of Article VIII—Transmission Line Charges, along the lines we discussed.

Northwestern's investment in the interconnection facilities is $325,000 and I am proposing that the $20,000 per year rental charge that has been in effect since January 1, 1936 be assumed to cover interest, depreciation and maintenance on one-half of the total investment as follows:

Depreciation and maintenance—3½% of the total investment

Interest—5% per annum on the unpaid balance.

On this basis Dakota's share of the investment will be amortized in 1953 and if the contract is continued after that date the rental charge will cover only depreciation and maintenance. I have tried to base this on our actual costs and it seems to me that something along this line is defensible from the standpoint of both parties.

You mentioned that you had some other changes to suggest in the way of clarification and that possibly Mr. Scheetz would have other changes to suggest at the time he went over the agreement. If you will furnish Mr. Buell and also this office with a tabulation of the changes you propose we shall be glad to incorporate them in the agreement and furnish you with copies for your final approval.

Yours very truly,

C. L. SANDSTEDT,
Vice President & Treasurer.

CLS/f

Encl.

Plaintiff's Exhibit 67, which was identified and produced by White, and also referred to as Plaintiff's Exhibit 6 in White's deposition, was received in evidence. It consists of a tabulation of computations regarding the amortization of $162,500 commencing January, 1936, and ending in 1952 by applying on such amortization the portions of the monthly payments of $1,666.66 remaining after applying

3½% for maintenance and 5% for interest, the said amount of $162,500 being stated as (Dakota Public Service Company's share of interconnection facilities).

Q. After you received Plaintiff's Exhibit 6 did you have further meetings with any of the joint management staff from the Huron office concerning the amount to be amortized using the 3-1/2 per cent and the 5 per cent interest shown in Plaintiff's Exhibit 6 for identification?

A. As I recall I did.

Q. Do you recall where the first of those meetings, if there was more than one, was held? A. No.

Q. Do you recall whether there was more than one meeting with the staff between the time you received Plaintiff's Exhibit 6 for identification and the time when Exhibit F to the complaint, the original of that exhibit, was put in final form in which it was signed?

A. To the best of my recollection all of the meetings or talks that I had in that interval were exclusively with Mr. Sandstedt, and I cannot recall the number, the times or the places.

Q. Now, when I look at Plaintiff's Exhibit 6 for identification and the figures dealt with in Exhibit F to the plaintiff's complaint, particularly Section 3 of Article V of the 1941 contract, which I again show to you, I see that instead of retiring some fund in a period expiring in October, 1952, as shown on Plaintiff's Exhibit 6 for identification, Section 3 provides for the last payment to be made, in the amount of $1,348.82, on the first day of July, 1950, and then provides beginning August 1, 1950, and continuing monthly thereafter such monthly payments shall be $442.53. Will you explain how the period to be covered by the payments in Section 3 of Article V of the 1941 contract came to be changed to expire as I have stated in my statement of what I have observed?

A. Because at some date, subject to conversations—subsequent to conversations, in which it had been agreed that Mr. Sandstedt was to prepare the figure appearing in Plaintiff's Exhibit 6 for identification, a smaller amount than $162,000 was agreed upon as the amount to be amor-

tized under the formula which, when applied to that reduced amount, would determine the duration of the period in which the monthly payments of $1666.66 were to be made.

Q. Now, you say a smaller amount was agreed upon?

A. Yes.

Q. Between yourself and whom? A. Mr. Sandstedt.

Q. You do not recall when that was agreed upon?

A. I don't.

Q. Approximately when, can you tell?

A. No. I don't even recall whether or not it had been agreed upon before I actually received this computation shown on Exhibit 6.

Q. You think the smaller amount might have been agreed on before you saw Plaintiff's Exhibit 6 for identification?

A. I think it may, because I have a general impression that this computation was late in reaching me.

Q. When Mr. Sandstedt and you agreed upon the smaller amount, did he explain to you how that smaller amount was made up?

A. Unfortunately my recollection on that point is very vague, and my correspondence files have nothing in them from which I can refresh my recollection. To the best of my recollection, however, the suggestion of the smaller amount came from Mr. Sandstedt, and he volunteered the basis of its determination.

Q. What did he volunteer?

A. That a smaller amount was warranted.

Q. I thought you meant he volunteered how it was made up and the details of it?

A. I think he did. He gave me the reasons why. Well, now, I don't even recall now that he did. He must have given me the reasons why this smaller amount was warranted, and I cannot recall nor do I have anything in my files to tell me now what the basis of calculating that smaller amount was.

Q. Do you recall whether he advised you when the payments would retire, whatever the smaller amount was?

A. No, except that I know that a shorter period does appear in the final contract as executed.

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TRANSCRIPT OF RECORD

(Pages 497 to 736)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 77

MONTANA-DAKOTA UTILITIES CO., PETITIONER,

vs.

NORTHWESTERN PUBLIC SERVICE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 17, 1950.

CERTIORARI GRANTED OCTOBER 9, 1950.

Vol. II.

Pages 497 to 736, Inclusive.

RECORD.

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EIGHTH CIRCUIT.

No. 13,887
CIVIL.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA.

FILED DECEMBER 20, 1948.

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Q. Do you recall who put the amounts in the blanks in Section 3, of Article V of the original of Exhibit F to the plaintiff's complaint, being the contract of July 1, 1941? Do you know who filled in those apparent blanks? A. No.

Q. Did Mr. Sandstedt tell you what the amount to be returned consisted of in the aggregate; that is, did he say it was one half of the cost of the interconnection facilities to Northwestern as of January 1, 1936?

A. I don't recall that the figure was represented to me on exactly that basis, but—

Q. I am showing the witness the supplement to Exhibit F, being a supplemental agreement date March 13, 1943, which supplemental agreement is attached to plaintiff's complaint as a part of Exhibit F. See that (Indicating)? Do you want to read it?

A. I was looking at the wording. I see that, and I now note for the first time that it contains a representation which I had consistently insisted should not be included in previous agreements, namely, any representation by Dakota Public Service Company, as to the fact of a cost—

Q. To Northwestern?

A. (Continuing) —to Northwestern, for the property that it had purchased, or built.

Q. All right. Now can you tell me when, prior to the hearing this afternoon, if ever, you first heard from anybody that the investment of Northwestern in the interconnection facilities as at January 1, 1936, was $303,449.26?

A. No, I cannot tell you the time when I first heard of it.

Q. Had you ever heard of it before the hearing this afternoon?

A. In trying to refresh my recollection on that point, the only statement of the exact amount that I found of record in my files was in the supplemental agreement itself.

Q. So that since the time you began to collect data for this case, your effort to recollect when any representation was made to you as to the investment by Northwestern in the interconnection facilities, resulted in no ability on your part to recall whether there was any representation made to you, other than the $325,000 mentioned in Plaintiff's Exhibit 6 for indentification.

A. And I do have a distinct recollection that the $325,000

had been used more than once in conversation, letters and what-not, as the presumed cost of those facilities. I was aware that that period of amortization payments had been shortened during the course of our conversations about the 1941 agreement, before a final agreement was signed. I could not recollect the reduced amount that was used as a basis for shortening the period of those payments, and I have been unable to find in any correspondence mention of that exact amount, except in the supplemental agreement of 1943.

Q. That is the supplement to Exhibit F to plaintiff's complaint to which you refer? A. Yes.

Q. Now, did anybody work out for an amortization table of a smaller amount?

A. As I recall that there was another similar calculation on another basis, and I have not found in my files similar sheets to show such an amortization.

Q. When you said another table on another basis, you didn't mean on another basis. You mean with another principal amount? A. That's right.

Q. Now, let's go back to one of the first questions I asked you. The 5 per cent interest figure came to you from Mr. Sandstedt?

A. That's right. It was proposed as a fair figure.

Q. As a fair rate, and the 3-1/2 maintenance figure appearing at the top of one of the columns on the first page of Plaintiff's Exhibit 6 for identification came to you from Mr. Sandstedt? A. That's right.

Q. Now, did he give you any breakdown of the 3-1/2 per cent maintenance figure?

A. I do not recall. I found nothing on the subject in my files.

Q. Without remembering or attempting to recall the breakdown of that figure, can you tell us whether any explanation was given to you by Mr. Sandstedt as to what he meant by the term "maintenance"?

A. As I recall, that included taxes, insurance, maintenance and replacements, and all operating expenses, the principal of which I believe would be maintenance.

Plaintiff's Exhibit 68, which was identified and produced by White, and is also referred to as Defendant's Exhibit 15 in White's deposition, was received in evidence. It reads as follows:

Plaintiff's Exhibit 68.

Subject: Additional Generating Capacity

Location United Public Utilities—Dakota Subs.

To: F. E. Kruesi

August 14, 1936.

We have carefully reviewed the Sargent & Lundy report of June 26, 1936 and herewith give our conclusions and recommendations.

This report emphasized the need for additional generating capacity and makes three specific suggestions for the location; namely,

1. An additional boiler in Beulah Station—Est. Cost $141,250.

2. A boiler and turbine in the present Bismarck plant—Est. Cost—$397,400.

3. A new power plant to be located on the Missouri River between Bismarck and Mandan—Est. Cost $399,275.

The 1935 coincident 15-30 minute peak demands of the system were as follows:

North Dakota Power & Light Company	6,285 KW
Northern Power & Light Company	3,150 KW
Total	9,435 KW

The effective generating capacity of the combined companies is 10,490 KW and the maximum rated capacity is 11,880 KW, which leaves a very narrow margin of reserve.

The combined companies serve 18,300 customers and 94 towns with 1,256 miles of transmission line, so it can be

appreciated that the territory is sparsely settled. The rates charged for service will not justify a substantial investment in stand-by generating equipment and we have always gotten along with a minimum of reserve equipment.

Consideration has been given to purchasing the additional requirements but there is no adequate source within reasonable distance and the situation resolves itself into accepting one of the three suggestions made by Sargent & Lundy.

Upon receiving Sargent & Lundy's report a conference was held with our Engineering Department, load dispatchers, Messrs. Blackstun, Renden, Sandsted and the writer. After carefully considering and weighing all of the possibilities it was unanimously agreed that a new boiler be installed in the Beulah plant for the following reasons.

1. The territory has been exceptionally hard hit by drouth which will probably have an effect on future loads and revenues.

For this reason we are of the opinion that capital expenditures should be kept at a minimum until we have a better idea of what the future holds in store for us.

2. The present Beulah plant has two boilers and two turbines rated at 2500 KW and 3500 KW. Neither of the boilers is large enough to carry both turbines and when a boiler is off the line we lose approximately 2800 KW.

During these periods it is necessary for Northwestern Public Service Company to furnish emergency service, which taxes the other plants to the limit. We are continuously faced with a serious interruption to service if a 5000 KW turbine was out of service at either Aberdeen or Mitchell at the same time a boiler is out of service at Beulah.

During the past year a boiler has been out of service every month for repairs for a total of 2,144 hours. During this period it has been necessary to operate inefficient equipment.

3. We have a substantial investment in the present Beulah station and transmission lines and the addition of another boiler will enable us to utilize this investment to the fullest extent.

By keeping both turbines on the line the output can be increased approximately 8,760,000 KWH annually at a savings of approximately 3 mills per KWH, making a total saving of approximately $26,000 annually. In addition, boiler maintenance will be reduced approximately $2,000 a year. This saving represents a return of approximately 18% on the investment of $150,000. This does not include the profit to Knife River Coal Mining Company on the additional coal which is mined at a cost of approximately 50¢ per ton and sold to North Dakota Power & Light Company for $1.40 per ton.

4. Sargent & Lundy's report gives an investment cost of $397,400. for a boiler and turbine to be installed in the Bismarck station and based upon past experiences we are not convinced that it is wise to invest that amount in this station. This plant is located on one of the principal business streets and we have had trouble on account of fly ash and spray from the cooling pond.

Bismarck has had an artificial boom owing to the concentration of Federal employees and we are not convinced that the present trend of increased loads will continue. The boiler at Beulah will add approximately 2800 K. W. to the capacity of the system which will be ample under almost any conditions until 1938. This will give us an opportunity to more accurately estimate future conditions. If additional capacity is needed at some later date we are inclined to favor an entirely new plant on the Missouri River between Bismarck and Mandan. The investment cost for a new plant is approximately the same as for the improvements suggested at the Bismarck station and the saving in taxes would offset the payroll costs of operating the Bismarck plant for steam heat purposes.

Attached hereto is a cash estimate which can be briefly summarized as follows:

Cash Balance August 1, 1936		$166,000
Operating Receipts for remainder of year		397,500
Total cash and receipts		$563,500
Disbursements:		
Operating expenses		$217,700
Taxes		18,200
UPU Co. Interest		59,000
Total		$294,900
Balance for Construction and Dividends		268,600
Dividend Requirements per original budget		136,900
Amount needed to maintain minimum bank balances		30,000
Balance available for construction		101,700
Estimated cash requirements for construction		
Beulah boiler	$150,000	
Pump & Con. #1 Turbine [(Bismrck)]	2,300	
Concrete stack—Bismarck Plant	16,000	
Feeder regulators—Bismarck Dist. System	15,000	
Rebuild Bismarck Dist. System	10,000	
" Mandan " "	7,000	
" Mott " "	4,000	
" Dickinson " "	8,600	
" Hebron " "	3,500	
Total	$216,400	
Less Est. Overhead	20,000	$195,600
		$362,500
Additional Cash Required		93,900

You will notice that we propose paying a common dividend of $136,900, which is the entire amount of our estimated income for the year. We have shown the entire amount of construction to be expended this year, when as a matter of fact some of this work will probably be carried over until next year. The amount of new money required will therefore be something less than the $93,900 shown above. It is immaterial to us whether we pay the entire amount of income available to you in dividends and then obtain a loan from you, or pay the net amount of cash that we have after taking care of our other obligations.

f.

Q. Mr. White, again referring to Defendant's Exhibit 15 for identification, I note that in the minutes of the meeting of August 28, 1936, the memorandum is described as having been prepared by vice president Strike of North Dakota Power & Light Company, addressed to F. E. Kruesi of the same company. As president, do you know of your own knowledge whether or not memorandum of which Defendant's Exhibit 15 is a copy, was prepared by Mr. Strike?

A. Yes.

Q. Was it so prepared? A. Yes.

(Mr. Stafford) Q. Mr. White, do you have any recollection at the present time of what Mr. Strike told you was the rate in force on the interchange of energy between those companies at that time? A. Yes.

Q. Well, directing your attention specifically as to November, 1932?

A. That was the time of the study that was made during my receivership.

Q. Do you know who made the study?

A. Mr. Gazin, who was an engineer for the company.

Q. Now, you say you do have a recollection of what rate was then told to you which was in force on the interchange of energy between the companies? A. Yes.

Q. Will you please state what that rate was?

A. 3½ mills per kilowatt hour from North Dakota to Northern Light & Power; 5 mills per kilowatt hour from Northern Power & Light to Northwestern Public Service

Company; and 5 mills per kilowatt hour from Northwestern Public Service Company to Northern Power & Light.

Q. You have referred to a study made during your regime as receiver, in November, 1932, or about that time, by Mr. Gazin. I will show you this document, which has been marked Defendant's Exhibit 4 for identification, which is headed "Intercompany rate analysis between Northwestern Public Service Company and North Dakota Power & Light and Northern Power & Light Company," and ask you to examine the same and tell me whether or not that is a true, accurate and correct copy of that rate analysis? (Handing document to the witness) A. It is.

Plaintiff's Exhibit 69, which is also referred to as Defendant's Exhibit 4 in White's deposition, was identified and produced by White and received in evidence. It reads as follows:

Plaintiff's Exhibit 69.

Inter-Company Rate Analysis

Northwestern Public Service Company
North Dakota Power & Light Company
Northern Power and Light Company

November 22, 1932.

A study has been made of the rate set up covering the sale of energy between the three companies in the interconnected system of North and South Dakota.

The system layout is such that the mouth of mine station at Beulah, North Dakota, which has by far the lowest production costs, is in position to produce certain energy requirements for all three companies, thereby greatly improving Beulah station load factor and lowering all system "out of pocket" fuel costs.

The plan of operation followed, therefore, is to carry all load possible at Beulah. This at once brings up the problem of rates for this energy transferred. Starting with a study of the costs at Beulah station and working out over the system, the rates finally adopted as a result of this study are as follows:

North Dakota Power & Light Co.,
Sales to Northern Power &
Light Co. .....Flat $0.0035 per KWH

Northern Power & Light Co.
Sales to Northwestern Public
Service Co. .....Flat $0.0050 " "

A summary outline of the study which brought out this rate set up follows:

Beulah Station

Present Operation

Ave. Monthly N KWH Gen.....	2,100,000
Ave. Fuel Cost per N KWH.....$0.00255	
Ave. Increment Maint. Cost.....$0.0001	
Unit excess Cost of Energy produced $0.00265	

Operation without Inter connection to Northern Power & Light Company:

Without any inter-connection with Northern Power & Light Co., and indirectly, Northwestern Public Service Co., the N KWH required for North Dakota Power & Light Co. would be as follows:

Ave. Monthly KWH Sales (Excl. Inter-Co.).....	950,000	KWH
Ave. Percent Losses—System (Light Load).....	18%	
Required N KWH.....	1,160,000	N KWH
Ave. Monthly N KWH Gen. by Standby and Steam Heat Plant (Mainly Bismarck).....	300,000	
	860,000	N KWH
Fuel Cost Beulah Station on 860,000 N KWH Load (from records and fuel cost curves).....	$0.00385	
Fuel and Added Maint. Costs present load.....	$0.00265	
Unit fuel cost saving due to improved load factor....	$0.00120	
Ave. Yearly N KWH required N. D. P. & L. Co. only, 1,160,000 × 12	13,920,000	N KWH
Annual Savings to N. D. L. P. Co. Production Expense by Inter-Connection 13,920,000 × .0012.....	$16,704.00	

Northern Power & Light Company.

While this Company does not have a station which would even approximate the product costs at Beulah, it does furnish the bulk of the added load by virtue of which the Beulah Station is able to reach the low fuel cost under which it is now operating. There is no doubt, but that Northern Power & Light Co. could have installed capacity which would produce low cost energy but the decision has been made to throw this load to Beulah in return for a low energy rate and generating capacity. In consequence of this, the Beulah station was built up to handle this load and thereby effect the savings in power cost to North Dakota Power & Light Co., set out above. This [Companies] system, therefore, in effect can be considered as par of the North Dakota Power & Light Company.

Cost of Current to Northern Power & Light Company.

System peaks of Northern Power & Light Company during peak load season are met by output of Beulah Station and Mobridge Station. The peaks and output are as follows:—

Annual KWH Required for N. P. & L. Co.		10,000,000 KWH
System Peak of Year (Hourly)	2200 KW	
Carried by Mobridge Station (During Heating Season) (Max. Hr.)	700 KW	
Allocated to Beulah Station	1500 KW	
Fixed Charges of Beulah Station Chargeable to N. P. & L. Co.		
1500 KW × $125.00 per KW cap. × 12%		$22,500.00 per yr.
Energy Cost to Serve:		
10,000,000 × .00265		26,500.00 " "
Total		$49,000.00 " "
Savings to N. D. P. & L. Co. Due to Increased Load Factor		16,700.00 " "
		$32,300.00 per yr.
Unit Cost: —32,300 / 10,000,000 =		$0.00323
Energy Rate Set at		0.0035
Gross Income to N. D. P. & L. Co.		
10,000,000 × .0035		$35,000.00 per yr.
Net Gain to N. D. P. & L. Co.		2,700.00 " "

Northwestern Public Service Company.

The sale of current to this Company is considered only as the excess current available from Beulah over and above that required to supply North Dakota Power & Light Co., and Northern Power & Light Co. There is little value to this connection from the view point of standby capacity to Northwestern Public Service Company, for the reason that over peak hours there is no available capacity from Beulah to the Northwestern Public Service Co., the current passing over Bus tie at Aberdeen during peaks being practically zero. This current is considered "Dump Current" and is valuable primarily to improve Beulah load factor and to reduce fuel costs over the entire system by generating current during off [peaks] hours at that station.

The value of this current does not include any plant fixed charges for the reasons outlined above and does not include transmission line fixed charges since Northwestern Public Service Co. made the entire investment for this inter-connection.

The rate evolves into a question of cost to deliver to Aberdeen Bus tie and what N. W. P. S. Co. can afford to pay for such off peak energy.

Cost to Deliver Current to Bus Tie.

Purchase Price by Northern Power & Light Co.	.0035
Losses over High tension system.....	20%
Del. Cost of Energy.....	.0044

Aberdeen Station Costs:

Ave. Monthly N KWH.....	1,300,000	
Ave. Fuel Costs per N KWH.....	$0.0066	per N KWH
Bank Boiler Expense (18 Hrs. per Day)		
2½ tons per day @ $3.00 — $7.50 per day		
$7.50 × 30 = $225.00 per month		
225		
1,300,000 Bank cost per N KWH = Per N KWH	.0017	
Current	.0048	per N KWH
Energy Rate Set at (sale by N. P. & L. Co. to N. W. P. S. Co.)	.0050	per N KWH

The above rate allows a slight margin of Profit to Northern Power & Light Co., (.005 — .0044) and at the same time is comparable to Production Costs possible on Northwestern Public Service Co. system. As stated this sale of excess current to Northwestern Public Service Co. does reduce fuel cost outlay for the entire system and at the same time improves costs of power to North Dakota Power & Light Co., and all of these advantages are obtained without placing any unfair expense on anyone of the three companies of the group, with arrangements shown for rates of energy transferred from Company to Company.

W. T. GAZIN.

Mr. Benson: We offer in evidence the deposition of K. D. Carpenter, which was taken in this proceeding and returned to the Clerk of this Court in this proceeding, together with the exhibits. We offer the exhibits that were offered at the same time, and returned with the deposition.

Mr. Royhl: Exhibits 18 to 27, both inclusive, that are offered as part of the deposition now being offered in its entirety, we, of course, would like, in an orderly way, to make objections to those exhibits as they are offered.

The Court: Do I understand the exhibits are offered with the deposition?

Mr. Royhl: We would like to have an orderly ruling by the Court.

The Court: If the exhibits are referred to in the deposition, there is no jury here, and I am inclined to admit the exhibits in full, but you may make your record.

Mr. Stafford: To which offer the defendant objects on the ground the entire line of testimony or interrogation of this witness, together with all answers thereto, are incompetent, irrelevant and immaterial in this case for any purpose; they have no bearing on any issue made under the pleadings in this case; there is no sufficient or other foundation laid for any of the documents which are [offers] as exhibits, Plaintiff's Exhibits 18 to 27 in the deposition, inclusive; there is no charge in the complaint as to any fraud or other improper dealing in connection with any of the

contracts that comprise said exhibits; the said contracts in this evidence not bearing upon any of the charges asserted in the complaint, and do not effect such charges insofar as they relate to defendant or any of the individuals against which the charges of fraud are brought.

The Court: Objection overruled.

Mr. Royhl: May we show the same objection to each of the exhibits as offered in the deposition, being in the deposition marked Exhibits 18 to 27, both inclusive, and have that same objection stand as to each of said exhibits?

The Court: Yes, you can have that if you want to, and the same ruling of the Court.

Mr. Benson: Plaintiff offers in evidence the deposition of Chester F. Sargent, which was taken pursuant to stipulation between the parties and was duly returned to the Clerk of this Court, and we offer therewith an exhibit which was returned with the deposition and marked as Plaintiff's Exhibit 28, and the exhibit which was returned with the deposition and marked as Plaintiff's Exhibit 29, and the exhibit which was returned with the deposition and marked as Plaintiff's Exhibit 30.

Mr. Stafford: To which we make the same objections as interposed to the offer of the deposition and exhibits of the witness, Carpenter, last stated.

The Court: Same ruling.

Plaintiff's Exhibits 18 to 27 in Carpenter's deposition, and Plaintiff's Exhibits 28 to 30 in Sargent's deposition were identified and received in evidence as Plaintiff's Exhibits 70 to 81, both inclusive.

K. D. CARPENTER, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and deposed as follows:

Direct Examination, by Mr. Benson:

Q. What is your full name, Mr. Carpenter?
A. K. D. Carpenter.

Q. Mr. Carpenter, what is your business?

A. I am president of Middle West Service Company.

Q. How long have you been such president?

A. Since February, 1946.

Q. Prior to that were you an officer or employee of Middle West Service Company? A. Yes.

Q. How long have you been with that company?

A. Since I was an employee, beginning March, 1938.

Q. And have you been with that company continuously since that time? A. I have.

Q. Can you tell us some of the offices, other than president, which you have held in the Service Company?

A. Yes. My first office was the election as assistant to the president, in September, 1942. I was elected secretary in November, 1943. In February, 1946, I resigned those offices, assistant to the president and secretary, and secretary, and was elected president of the Service Company.

Q. And you had been with Middle West Corporation or the Middle West Utilities Company prior to going with Middle West Service?

A. I was never an employee or officer of Middle West Utilities Company or Middle West Utilities Corporation, or the Middle West Corporation.

Q. Were you able to find the contracts between Middle West Service Company and North Dakota Power and Light Company for services of Middle West Service Company? A. Yes, I was.

Q. Can you produce them here?

A. There is the contract. (Handing document to counsel).

Q. Was there only one contract between Middle West Service Company and North Dakota Power and Light Company for services?

A. That was the only contract I was able to find.

Q. Were you able to find any contracts between Middle West Service Company and Northern Power and Light Company?

A. Yes, this is the contract. (Handing document to counsel.)

Q. Were there any other contracts in addition to this contract which you have produced, between those two companies?

A. That was the only contract I was able to find.

Plaintiff's Exhibit 70, which is identified and produced by Carpenter and is also referred to as Plaintiff's Exhibit 18 in Carpenter's deposition, was received in evidence with his entire deposition. It reads as follows:

Plaintiff's Exhibit 70.

Suite 2100
20 North Wacker Drive
Chicago, Illinois

February 16, 1937

North Dakota Power & Light Company,
Huron,
South Dakota

Gentlemen:

It is proposed, effective at the close of business on December 31, 1936, that the services herein described of the supervisory staff of the central organization maintained by the undersigned shall be made available at all times to your company and to the extent from time to time desired by you, shall be furnished to your company. These services include the services rendered to operating companies by the following departments:

1. Executive and Operating Department. The executive and operating department is composed of men of wide experience in the public utility field. These executives will assist the officers and staff of your company in the solution of major problems and in the formulation of plans and policies regarding the affairs of your company.

Field executives of the operating department will follow the operation of the companies to which they are assigned and by frequent visits and correspondence will assist the local staff of the operating company in the solution of operating problems and will coordinate the work of the various departments of our central organization with the work of the staff of each operating company.

2. Treasury Department, maintained to advise with operating companies regarding depositaries and to make upon request disbursements of their Chicago and New York funds; to assist in finding profitable and satisfactory in-

vestments for surplus funds of operating companies; to advise regarding financial conditions in the territory served by operating companies; to advise concerning general collection and credit activities of operating companies; to confer with operating companies regarding their sinking fund and other mortgage provisions and to assist in arranging bank loans and in securing credit from vendors.

3. Corporate Finance Department, maintained to advise and assist in the modification or the adjustment of capital structures of operating companies in order to reduce fixed charges and/or taxes and in meeting, anticipating or extending maturing obligations; to analyze new capital requirements and to suggest appropriate financial structures; to maintain relations with investment bankers, insurance companies and financial and statistical agencies presently or prospectively interested in the securities of operating companies and with stock exchanges, publishers of manuals and technical magazines; to assist in negotiation and preparation for the market of new issues of securities; to make special analyses of and report upon outside investments of operating companies; to assist in the preparation of annual reports of operating companies in standard form and to furnish information to the public about earnings, dividends and other items of major interest relating to operating companies.

4. Commercial Department, maintained to develop effective sales policies of operating companies and through frequent visits to such companies to plan sales programs; to aid in special campaigns to secure new business; to increase the use of services by present customers; to regain lost business; to assist in retaining business; to maintain up-to-date data and to keep operating companies informed with respect to new uses of utility services, new appliances and current developments in merchandising methods.

5. Rate Department, maintained to analyze rate structures of operating companies; to aid in the formulation of rate policies and in the coordination and revision of rate structures and in the adjustment of rate schedules; to assist in compiling and presenting information, studies and exhibits requested in rate proceedings before regulatory commissions; to make studies and comparisons of rates in

effect in the industry generally and to distribute pertinent information to operating companies; to analyze the service needs of various classes of customers and the conditions and costs with respect thereto; to assist in connection with negotiations of large power contracts and in dealing with competitive situations.

6. Engineering Department, maintained to consult with the management of operating companies with respect to devising methods for supplying increased loads at minimum costs, improving operating conditions of physical properties and dealing with problems of extension and rehabilitation; to analyze expenditures for constructions, investment, maintenance and retirements in order to assure the maximum benefit to operating companies; to inspect the properties of operating companies; to assist in dealing with the contracts and engineering problems of operating companies in order to obtain the greatest operating efficiency and uniformity of engineering practices.

7. Purchasing Department, maintained to study the aggregate requirements of the operating companies; to negotiate appropriate syndicate and general purchasing agreements for the exclusive benefit of operating companies and to check the participation of such companies in such agreements; to distribute information useful in local purchasing and, on request, to act as purchasing agent of the operating companies in specific negotiations; to assist the operating companies in keeping at a minimum their investment in materials and supplies; to maintain a general list of useful, idle and surplus equipment and to facilitate disposal of the same to affiliated companies or to other buyers.

8. Secretarial Department, maintained to arrange for calling and holding meetings of stockholders and/or directors of operating companies when held at points removed from the principal offices of such companies; to prepare agenda for such meetings; to conduct the same and to notify the operating companies of action taken; to inscribe minutes and to supply certified copies to trustees, registrars and transfer agents and to maintain supplies of stock certificates and to arrange for the replacements of lost certificates.

9. Statistical Department, maintained to collect, compile and tabulate operating and statistical information for distribution to operating companies; to maintain a general library and files on statistical information and conditions of the public utility industry; to distribute appropriate information to operating companies and to assist in the preparation of statistical information for operating companies.

10. General Accounting Department, maintained to advise and assist in the accounting practices and procedure of operating companies; to study and assist in the accounting preparation and distribution of construction, retirement and maintenance work orders; to analyze financial statements of all operating companies and to advise local accounting staffs relative to proper presentation of results; to consolidate and compile balance sheets, and income and other statements of operating companies in order to determine results and trends for guidance in operation and management; to make researches and studies of other public utility accounting forms and reports and make suggestions and recommendations with respect thereto for operating companies serving diversified territories.

11. Insurance And Safety Department, maintained to supervise and administer for operating companies all forms of insurance including fire, tornado, boiler, machinery, workmen's compensation, public liability, automobile, group, life, burglary, robbery and forgery insurance and fidelity and surety bonds; to make surveys and inspections for the purpose of obtaining the most favorable forms of coverage at minimum rates and to assist in the adjustment of claims and losses; to render personal service through safety engineers for the prevention of accidents and fires by means of inspections of physical properties, recommendations as to preventative equipment and instruction and education of personnel in employee safety groups; to prepare and distribute safety rules and safety literature; to analyze the causes of accidents; to make recommendations for the elimination of unsafe practices and unsafe conditions and to assist the operating companies in creating and maintaining interest in their accident and fire prevention programs.

12. Budget Department, maintained to assist in preparing and following up forecasts of cash receipts and dis-

bursements of operating companies and in preparing income, operating, sales and construction budgets in order to conserve cash receipts and to control expenditures; to analyze current operating trends in relation to budget forecasts and to study economic data of territories served by operating companies in order to detect conditions which would necessitate revision of budgets.

The compensation to be paid to the undersigned for the services of said departments, as above outlined, shall be:

(a) Eight-tenths (8/10) of one per centum (1%) of the gross operating revenue of your company after (1) excluding revenue received from jobbing and merchandising operations, transportation, sales of coal and steam heating, and (2) deducting from such gross operating revenue all payments for purchases made for resale purposes by you from any other company where such payments constitute revenue to such other company upon which it is then obligated to pay a supervision fee under an agreement similar hereto then in force between such other company and the undersigned; provided, however, that if the cost of maintaining, and rendering the services of, said departments, as determined by the Auditor of the undersigned (whose determinations and allocations of cost it is agreed shall be binding upon both parties hereto) shall for any month or months exceed eight-tenths (8/10) of one per centum (1%) of your gross operating revenue, determined as aforesaid, then the undersigned shall bill and you shall pay the cost (determined as aforesaid) of maintaining, and rendering the services of, said departments during said month or months, but it is agreed that if at any time the cost of maintaining, and rendering the services of, said departments, as billed you by the undersigned, shall exceed eight-tenths (8/10) of one per centum (1%) of your gross operating revenue, (determined as above provided), then you may at your option, cancel and annul this contract at the end of the month in which such bill is received by giving the undersigned written notice of your intention so to do; and

(b) The out-of-pocket travelling expenses incurred by the personnel of the staff incident to the services rendered to you.

Special Services: In addition to the departments above mentioned, the company also maintains an Income Tax Department and a Traveling Auditing Department the services of which are available to you. As the character and extent of the services rendered by these departments will vary in accordance with your requirements, you shall pay for services rendered to you at your request by these departments as follows:

Income Tax Department:

$75.00 per diem, each, for the services rendered by the attorney and the auditor of the Income Tax Department;

$50.00 per diem for the services rendered by the manager of the Income Tax Department;

$35.00 per diem for the services rendered by the seniors in the Income Tax Department;

$25.00 per diem for the services rendered by the semi-seniors in the Income Tax Department;

$10.00 per diem for services rendered by stenographers and typists in the Income Tax Department.

In addition to the above per diem charges, you will be billed for out-of-pocket expenses, plus traveling expenses, of the individuals.

The per diem charges include all overhead costs such as rents, income tax services, stationery, printing, etc., and therefore you will not be billed in addition for such overhead costs.

Traveling Auditing Department:

$25.00 per diem for services rendered by traveling auditors.

In addition to the above per diem charge, you will be billed for out-of-pocket expenses, plus traveling expenses, of the individuals.

The per diem charge includes all overhead costs such as rents, stationery, printing, etc., and therefore you will not be billed in addition for such overhead costs.

Other Special Services: For other special services not specifically covered herein but rendered to you at your request, you shall pay as mutually agreed upon between us for such special services.

It is agreed that no liability shall exist or be asserted against the undersigned on account of any services or advice furnished pursuant to the terms hereof.

This agreement (unless terminated pursuant to some preceding provision hereof) shall remain in effect until terminated at the end of any month by either party hereto by mailing to the other party ninety days' prior written notice of such termination and shall not be assignable by either party without the consent of the other.

All previous agreements between you and the undersigned or between you and the Receivers or Trustee of Middle West Utilities Company are hereby cancelled and terminated as of the date this agreement takes effect, as hereinbefore stated, except that any amounts payable or to be credited under said agreement shall be paid and credited according to the terms thereof.

If the foregoing meets with your approval, please indicate your acceptance hereof by executing the form of acceptance set out below.

Very truly yours,

MIDDLE WEST SERVICE COMPANY,
By D. C. GREEN,
President.

(Seal)

Attest:

GAIL BELDEN,
Secretary.

We hereby accept and agree to the foregoing.

NORTH DAKOTA POWER AND LIGHT CO.,
By C. J. STRIKE,
Vice President.

(Seal)

Q. Have you made an endeavor to find in the files of Middle West Service Company any other contracts between North Dakota Power and Light Company and Middle West Service Company?

A. Yes sir. I had a search made for any contracts and all contracts between these two parties to the contract I just mentioned.

Q. You have been unable to find any contracts between those parties, except for Plaintiff's Exhibit 18 for identification? A. That is correct.

Q. Plaintiff's Exhibit 18 for identification is the agreement under which Middle West Service Company rendered services to North Dakota Power and Light Company, is it?

A. Yes, sir.

Q. Plaintiff's Exhibit 18 for identification was taken from the regular files of Middle West Service Company?

A. Yes.

Q. Kept in the regular course of that company's business? A. From its corporate files.

Q. This Exhibit 18 was withdrawn from those files for the purpose of bringing it to this proceeding? A. Yes.

Mr. Benson: I show you Plaintiff's Exhibit 18. Do you know the signature of the last page of that exhibit?

A. Yes sir.

Q. Can you state the signature under the name of each company?

A. Mr. D. C. Green signed on behalf of Middle West Service Company, as president. Mr. C. J. Strike signed as vice president in behalf of North Dakota Power and Light Company. The signature of Mr. Green was attested by Mr. Gail Belden, then secretary of Middle West Service Company.

Q. And was the seal attached to that Document? Was the seal attached to that document?

A. There were seals of both companies attached to the document.

Q. Imprinted seals? A. Yes.

Q. You recognize all those signatures? A. Yes.

Q. Do you recognize the seal as being the seal of Middle West Service Company? A. I do.

Plaintiff's Exhibit 71, which was produced and identified by Carpenter, is also referred to as Plaintiff's Exhibit 19 in Carpenter's deposition, was received in evidence with his entire deposition, and is identical with Plaintiff's Exhibit 70, except that it is a contract between Middle West Service Company with Northern Power and Light Company.

Q. Was it executed about the date that it bears, or don't you know, of your own knowledge, or did you have sufficient knowledge to know at that time what was going on with reference to these contracts?

A. I was not associated with Middle West Service Company at that date—

Q. I see.

A. (Continuing) —of the contract,

Q. Do you recognize the signatures on the last page of the agreement? A. I do.

Q. What signatures are they?

A. D. C. Green signed for, as president, of Middle West Service Company attested by Gail Belden, secretary of Middle West Service Company. And C. J. Strike as vice-president signed for the Northern Power and Light Company.

Q. And there are two corporate seals on that last page?

A. There is.

Q. Do you recognize one of them?

A. I do. That of Middle West Service Company.

Q. Where did you get it?

A. From the corporate files of the Middle West Service Company.

Q. The files were kept in the usual and regular business of that corporation? A. Yes, sir.

Plaintiff's Exhibit 72, which was produced and identified by Carpenter and is also referred to as Plaintiff's Exhibit 20 in Carpenter's deposition, was received in evidence with his entire deposition. It is identical with Plaintiff's Exhibit 70, except that it is a contract between Middle West Service Company and Dakota Public Service Company dated July 1, 1939; made effective at the close of business on June 30, 1939; the word "you" in the first line of the

next to the last paragraph is "your predecessor company"; and it is signed on behalf of Middle West Service Company by F. E. Kruesi, President, and attested by Oliver McCormick, Secretary, and on behalf of Dakota Public Service Company by A. B. Sanborn, President, and attested by J. F. Buckmier, Secretary.

Q. Where did you get it?

A. From the corporate files of Middle West Service Company.

Q. Kept in the usual and the regular course of business of the Middle West Service Company? A. Yes sir.

Plaintiff's Exhibit 73, which was identified and produced by Carpenter and is also referred to as Plaintiff's Exhibit 21 of Carpenter's deposition, was received in evidence with his entire deposition. It reads as follows:

Plaintiff's Exhibit 73.

Suite 3518
20 North Wacker Drive
Chicago 6, Illinois

September 4, 1945.

Dakota Public Service Company
Huron, South Dakota

Gentlemen:

As of July 1, 1945, you became an indirect subsidiary of The Middle West Corporation and as such are entitled, under the provisions of the Public Utility Holding Company Act of 1935, to receive the services of Middle West Service Company at cost.

We, therefore, propose that the present agreement between us, dated July 1, 1937, be modified by the following supplemental agreement:

The sum to be paid to Middle West Service Company for maintaining, and for the services of, the Executive and Operating Department, Treasury Department, Corporate Finance Department, Commercial Department, Rate Department, Engineering Department, Purchasing Depart-

ment, Secretarial Department, Statistical Department, General Accounting Department, Insurance and Safety Department, Budget Department, and Income Tax Department, as outlined in the agreement of February 16, 1937, shall from and after June 30, 1945 be as follows:

(a) The cost of maintaining and rendering the services of said departments, as determined by the Auditor of Middle West Service Company (whose determinations and allocations of cost shall be binding upon both parties hereto) in accordance with the applicable rules, regulations and orders of the Securities and Exchange Commission; and

(b) The out-of-pocket travelling expenses incurred by the personnel of the staff incident to the services rendered to your company.

The cost (determined as aforesaid) of maintaining, and rendering the services of, said departments shall be paid for monthly whether or not the available services shall be fully utilized by you.

Except as modified by this letter, the agreement of July 1, 1937 is hereby confirmed.

If the foregoing meets with your approval, please indicate your acceptance hereof by executing the form of acceptance on the attached copy of this letter and returning same to us.

Very truly yours,

MIDDLE WEST SERVICE COMPANY,
By F. E. KRUESI,
President.

Attest:
K. D. CARPENTER,
Secretary.

We accept and agree to the foregoing.

DAKOTA PUBLIC SERVICE COMPANY,
By A. B. SANBORN,
President.

Q. Where did you get it?

A. In the corporate files of Middle West Service Company.

Q. Corporate files kept in the usual and regular course of that company's business? A. Yes, sir.

Mr. Benson: Plaintiff's Exhibit 21 is a modification of Exhibit 20? A. Yes.

Q. You made charges against Dakota Public Service Company for services subsequent to September 4, 1945? (Handing document to the witness.) A. Yes.

Plaintiff's Exhibit 74, which was identified and produced by Carpenter, is also referred to as Plaintiff's Exhibit 22 of Carpenter's deposition, and was received in evidence with his entire deposition. It reads as follows:

Plaintiff's Exhibit 74.

Middle West Service Company
20 North Wacker Drive
Chicago, Illinois

North West Utilities Company,
902 Market Street,
Wilmington, Delaware.

Gentlemen:

This will confirm our agreement that, pursuant to the provisions of the Public Utility Holding Company Act of 1935 and the rules adopted by the Securities and Exchange Commission pursuant thereto, all services rendered and to be rendered by Middle West Service Company in accordance with your request or requirements will be billed by us and paid for by you at the cost of such service, including out-of-pocket expenses incurred in connection therewith. The determination of such cost and expense by the Comptroller of Middle West Service Company will be accepted as establishing the cost, subject to such modifications or corrections, if any, with respect to methods or amounts that may be lawfully made from time to time by the Securities and Exchange Commission.

If the foregoing conforms to your understanding, please confirm by signing and returning to us the attached copy.

Dated as of September 9, 1939.

MIDDLE WEST SERVICE COMPANY,

By P. L. SMITH,
Chairman of the Board.

NORTH WEST UTILITIES COMPANY,
By GAIL BELDEN,
President.

Q. You recognize the signatures on that document?
A. I do.
Q. Whose are they?
A. P. L. Smith signed as chairman of the board of Middle West Service Company and Gail Belden signed as president of North West Utilities Company.
Q. P. L. Smith was chairman of the board of Middle West Service Company on September 9, 1939, was he?
A. He was.
Q. Gail Belden was president of North West Utilities Company on September 9, 1939, was he?
A. I assume he was.
Q. You don't know directly of your own knowledge?
A. I do not.
Q. After September 9, 1939, did Middle West Service Company make charges against North West Utilities Company? A. Yes.
Q. Where did you get Plaintiff's Exhibit 22 for identification?
A. From the corporate files of Middle West Service Company.
Q. Kept in the usual and regular course of the business of that company? A. Yes, sir.

Mr. Benson: In the files of Middle West Service Company were there agreements between Middle West Service Company and the Northwestern Public Service Company?

Mr. Stafford: That is objected to as irrelevant and immaterial.

A. Yes.

Q. And did you find agreements between Middle West Service Company and Northwestern Public Service Company for services?

Mr. Stafford: The same objection.

A. Yes.

Plaintiff's Exhibit 75, which was identified and produced by Carpenter, is also referred to as Plaintiff's Exhibit 23 in Carpenter's deposition, and was received in evidence with his entire deposition. It is identical with Plaintiff's Exhibit 70, except that it is dated August 18, 1934; is a contract between defendant and Daniel C. Green, temporary trustee of Middle West Utilities Company; is signed by said Green and by F. E. Kruesi as president for defendant; and except for the first paragraph and the material commencing "The compensation to be paid" and continuing through the balance of said Plaintiff's Exhiibt 70, in lieu of which Plaintiff's Exhibit 75 contains the following:

By order of the United States District Court for the Northern District of Illinois, Eastern Division, the undersigned has been appointed Temporary Trustee of Middle West Utilities Company, pursuant to Section 77-A and 77-B of the Bankruptcy Act and, as of the close of business on July 24, 1934, has taken over from the Receiver of the Company the property and assets then held by the Receiver. Included among these assets is the supervision contract between the Receiver and your company. As Trustee the undersigned proposes to maintain the supervisory staff of the central organization heretofore maintained by the Receiver and carry out the supervision agreements made by the Receiver. It is thought desirable, however, to terminate the agreement with the Receiver and to substitute therefor this agreement with the undersigned as Trustee.

It is, therefore, proposed, effective at the close of business on July 24, 1934, that the services herein described of the supervisory staff of the central organization main-

tained by the undersigned as Temporary Trustee (herein referred to as "Trustee") shall be made available at all times to your company and to the extent from time to time desired by you, shall be furnished to your company. These services include the services rendered to operating companies by the following departments:

The compensation to be paid to the Trustee for the services of said departments as above outlined, shall be:

Seven-tenths (7/10) of one per cent (1%) (or such less per cent as the Trustee at its option for any reason may fix at any time or from time to time) of the gross operating revenue of your company after (a) excluding revenue received from jobbing and merchandising operations, transportation, sales of coal and steam heating, and (b) deducting from such gross operating revenue all payments for purchases made for resale purposes by your company from any other company where such payments constitute revenue to such other company upon which it is then obligated to pay a supervision fee under an agreement similar hereto then in force between such other company and the undersigned; and

The out-of-pocket traveling expenses incurred by the personnel of the staff incident to the services rendered to your company.

Special Services: In addition to the departments above mentioned the Trustee also maintains an Income Tax Department and a Traveling Auditing Department the services of which are available to you. As the character and extent of the services rendered by these departments will vary in accordance with your requirements, you shall pay for services rendered to you at your request by these departments at rates to be agreed upon between us as the services are renderd.

This agreement shall remain in effect until terminated by either party hereto by mailing to the other party ninety days prior written notice of such termination and shall not be assignable except that it shall inure to the benefit of any successor trustee or trustees and to the benefit of the Receiver of Middle West Utilities Company in the event

the assets of that company are returned to the possession of the Receiver and may be assigned to any corporation organized to take over the assets of Middle West Utilities Company on reorganization or to any subsidiary of such company organized to render services of the kind provided for in this agreement. Unless assigned or transferred as above provided, this agreement shall terminate upon the final discharge by the Trustee or Trustees of Middle West Utilities Company.

The existing agreement between you and the Receivers of Middle West Utilities Company is hereby cancelled with the understanding that any amounts remaining unpaid under that agreement shall be paid to the undersigned.

If the foregoing meets with your approval, please indicate your acceptance hereof by executing the form of acceptance set out below.

Q. I show you Plaintiff's Exhibit 23 for identification and ask you whether you produced that document from the files of Middle West Service Company for the purpose of testifying in this proceeding? A. I did.

Q. Did you find it in the usual and regular corporate files of Middle West Service Company kept for the purpose of taking care of the service contracts and similar documents? A. Yes.

Q. Will you look at the last page of Plaintiff's Exhibit 23 for identification and tell me whether you know the signatures of the people on that page? A. I do.

Q. Who are they?

A. Daniel C. Green signed as temporary trustee of Middle West Utilities Company, and F. E. Kruesi signed as president of Northwestern Public Service Company.

Q. You produced Exhibit 23 from the regular corporate files of Middle West Service Company, as I understand it?

A. Yes.

Plaintiff's Exhibit 76, which was identified and produced by Carpenter, is also referred to as Plaintiff's Exhibits 24 and 25 of Carpenter's deposition, and was received in evidence with his entire deposition. It reads as follows:

Plaintiff's Exhibit 76.

October 23, 1934.

We enclose herewith notice of reduction of fee for Supervision Services from 7/10 of 1% to 6/10 of 1% effective at once, to be applied against October revenues.

This reduction has been made possible by certain changes and economies which we have been able to put into effect in this office. It is our desire that the scope of the work and the necessary personnel be limited to the needs of the operating companies in order that these services may be provided at minimum expense.

As you know, the purpose of maintaining a supervision staff in this office is primarily for the benefit of the operating companies, and we are pleased to advise you of this reduction.

Yours truly,

D. C. GREEN,
Trustee.

October 23, 1934.

Subject: Supervision Agreement.

Dear Sirs:

In accordance with contract covering Supervision Services between your company and Daniel C. Green, Trustee of Middle West Utilities Company, please be advised that the supervision fee is hereby reduced to 6/10 of 1% effective with the October revenues and payable in November. Fee should be calculated on this basis until further notice.

Yours truly,

D. C. GREEN,
Trustee.

Q. Where did you get them?

A. From the corporate files of Middle West Service Company.

Q. And did you find them in the corporate files where Plaintiff's Exhibit 23 was found? A. Yes.

Q. Are those files kept in the usual and regular business of Middle West Service Company? A. Yes.

Q. Have you had occasion to make any investigation as to the history of Mr. Green's dealings with Northwestern Public Service Company or other companies with reference to services rendered by Mr. Green, pursuant to agreement between him and the operating utilities, to ascertain whether or not Mr. Green amended agreements from time to time with such operating utilities? A. Yes.

Mr. Stafford: Wait a minute. We object to that as irrelevant, immaterial, an opinion and conclusion of the witness, and it is indefinite and uncertain.

Mr. Benson: Did you find that Mr. Green amended the rate of charge to the operating utilities during the time he was rendering service to operating utilities as receiver of the Middle West Utilities Company?

Mr. Stafford: The same objection.

A. Yes.

Plaintiff's Exhibit 77, which was identified and produced by Carpenter, is also referred to as Plaintiff's Exhibit 26 of Carpenter's deposition and was received in evidence with his entire deposition. It reads as follows:

Plaintiff's Exhibit 77.

Middle West Service Company
Chicago

For Company Business Only

Date July 15, 1938.

Subject Income Tax Department Services
Location
To Executives—cc Auditors
From N. P. Zech

This is to advise you that effective May 1, 1938, the cost of services of the Income Tax Department on current work will be absorbed in the general supervision costs.

In the event that work arises of a special and not of a current nature which makes it necessary for you to request special services from that department, you will be billed at cost for such services.

N. P. ZECH

Q. Where did you find that exhibit?

A. In the corporate files of Middle West Service Company.

Q. Files kept in the usual and regular transaction of that corporation's business? A. Yes.

Q. Did you find this Exhibit 26 in the same files as Plaintiff's Exhibit 23, the agreement with Northwestern Public Service Company? A. Yes.

Q. Do you know that Plaintiff's Exhibit 26 was sent to Northwestern Public Service Company, or a duplicate thereof, on or about the date of Plaintiff's Exhibit 26?

A. Yes.

Q. Is that a fact? A. It is a fact.

Plaintiff's Exhibit 78, which was identified and produced by Carpenter, is also referred to as Plaintiff's Exhibit 27 in Carpenter's deposition, and was received in evidence with his entire deposition. It reads as follows:

Plaintiff's Exhibit 78.

This agreement, by and between The Middle West Corporation, a Delaware corporation, (hereinafter referred to as the "Corporation"), and Middle West Service Company, an Illinois corporation (hereinafter referred to as the "Service Company").

Witnesseth:

Whereas, the Corporation has acquired by virtue of the Plan of Reorganization of Middle West Utilities Company, Debtor, and the Decree of Court confirming same, certain contracts entered in by the Trustee of said Debtor or the Receivers of said Middle West Utilities Company with operating companies providing for the maintenance of a

supervisory staff and the making available of the services thereof to such operating companies on the terms stated in said contracts; and it is desired, on the terms hereinafter stated, to transfer and assign said contracts to the Service Company;

Now, Therefore, in consideration of the premises and of One Dollar ($1.00), each to the other in hand paid, and of other valuable considerations, receipt of which is hereby acknowledged, the Corporation hereby transfers and assigns to the Service Company all right, title and interest of the Corporation in and to any and all contracts entered into between the Trustee of Middle West Utilities Company, Debtor, or the Receivers of Middle West Utilities Company and operating companies, providing for the maintenance of a supervisory staff and the making available of the services thereof to the operating companies, including, without restricting the generality of the foregoing, all such contracts made with the following named companies:

Arkansas-Missouri Power Company
Arkansas-Oklahoma Gas Company
The Bradford & Gettysburg Electric Light & Power Company
The Brookville and Lewisburg Lighting Company
The Buckeye Light & Power Company
Cap F. Bourland Ice Company
Central Illinois Public Service Company
Central Power Company
Central Power and Light Company
City Ice Company of Kansas City
Consolidated Coach Corporation
Consumers Ice Company
Copper District Power Company
East Missouri Power Company
The Eaton Lighting Company
Fort Smith Gas Company
Great Lakes Power Company Limited
The Greenville Electric Light and Power Company
Industrial Oil and Gas Company
The Kansas Electric Power Company

The Kansas Power Company
Kentucky Power & Light Company
Kentucky Utilities Company
Knife River Coal Mining Company
Lake Superior District Power Company
Lexington Ice Company
Lexington Utilities Company
Louisiana Ice and Coal Company, Inc.
Michigan Gas and Electric Company—Northern Division
Michigan Gas and Electric Company—Southern Division
Michigan Public Service Company
Missouri Edison Company
Missouri Gas & Electric Service Company
Missouri Public Service Company
The New Madison Lighting Company
North Dakota Power & Light Company
Northern Power & Light Company
Northwestern Public Service Company
Oklahoma Power and Water Co.
Old Dominion Ice Corporation
Old Dominion Power Company
Ozark Natural Gas Company
Pecos Valley Power & Light Company
Peoples Ice Company
Public Service Company of Oklahoma
Southern Gas Producing Company
Southern United Ice Company
Southwestern Gas and Electric Company
Southwestern Light & Power Company
Southwestern States Gas Company
Twin City Pipe Line Company
Weleetka Pipe Line Company
Western Ice Service Company
Western Ohio Public Service Company
Western Oklahoma Gas Company
West Texas Utilities Company
Wisconsin Power and Light Company

No contracts with holding companies are included in this transfer and assignment.

This transfer and assignment is made as of January 1, 1936, and the Corporation agrees to transfer and pay over to the Service Company all payments heretofore or hereafter received by it under said agreements for the period beginning January 1, 1936, and the Service Company agrees to assume and pay to the Corporation all costs incurred or charged by it on its books for the performance of said contracts for the period beginning January 1, 1936.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed by their respective officers and their respective corporate seals to be hereto affixed, attested by their respective Secretaries or Assistant Secretaries, this 29th day of January, 1936.

THE MIDDLE WEST CORPORATION,
By D. C. GREEN,
President.

(Seal)

Attest:
GAIL BELDEN,
Secretary.

MIDDLE WEST SERVICE COMPANY,
By D. C. GREEN,
President.

(Seal)

Attest:
GAIL BELDEN,
Secretary.

Q. You have not been able to find the original of Plaintiff's Exhibit 27? A. No.

Q. Where did you find Plaintiff's Exhibit 27?

A. In the corporate files of Middle West Service Company.

Q. You made a search for the original?

A. In the Middle West Service Company files.

Q. Yes. You have had occasion from time to time, particularly when you first came to Middle West Service Company, to ascertain the basis or charge to Northwestern Public Service Company and other companies? A. Yes.

Q. And in making your search or ascertaining the basis for the agreement under which such charge was made, did you have occasion to look for and examine an agreement between the Middle West Corporation and Middle West Service Company? A. Yes.

Q. Have you had occasion in the past, since you came to work for Middle West Service Company, to ascertain whether there was any agreement between Middle West Service Company and Northwestern Public Service Company concerning any services by Middle West Service Company to Northwestern Public Service Company? A. Yes.

Q. Since you have been with Middle West Service Company has Middle West Service Company rendered services to Northwestern Public Service Company? A. Yes sir.

Q. The nature of these [serviced], please.

A. Middle West Service Company has provided the services that are outlined and set forth in the agreement, which is Plaintiff's Exhibit—whatever it is.

Mr. Benson: (Handing document to the witness) Down at the bottom. A. 23.

Mr. Benson: Has Middle West Service Company rendered to Northwestern Public Service Company, since you became associated with Middle West Service Company, advice to the executive and operating departments of Northwestern Public Service Company? A. Yes.

Mr. Benson: They gave advice to the treasurer of Northwestern Public Service Company? A. Yes.

Q. To the commercial department of Northwestern Public Service Company? A. Yes.

Q. To the rate department of Northwestern Public Service Company? A. Yes.

Q. To the engineering department? A. Yes.

Q. To the purchasing department? A. Yes.

Q. To the accounting department? A. Yes.

Q. And other departments of Northwestern Public Service Company?

A. Yes; such as they requested upon the part of the Service Company.

Q. You know that services were rendered by Middle West Service Company to Northwestern Public Service Company subsequent to the time you came to Middle West Service Company? A. Yes sir.

Q. And continuously from the time you came to Middle West Service Company up to and through 1945? A. Yes.

Q. On Plaintiff's Exhibit 27, page 2, there is a long list of names. Do you know what those names represent?

A. They are the names of the companies with which service contracts were held by the trustee of Middle West Utilities Company, and assigned to the Service Company.

Mr. Benson: I show you Plaintiff's Exhibit 27. Do you know whether the names of the companies listed on page 2 of Exhibit 27 were all subsidiaries of the Middle West Corporation, as of the date Exhibit 27 is dated?

Mr. Stafford: That is objected to as incompetent, irrelevant, and immaterial, calls for the conclusion of the witness, not sufficient foundation laid.

A. No, I don't know that.

Q. You do not know that? A. No.

Q. Do you know whether any of them were?

Mr. Stafford: The same objections.

A. Some of them I know were.

Q. In order to expedite your answer, will you look at page 2 of Exhibit 27 and state which of those you know were at that time subsidiaries of the Middle West Corporation, directly or indirectly?

Mr. Stafford: The same objection.

A. I believe they were all affiliated with Middle West Corporation at this time.

Mr. Stafford: The same objections, and also that the answer is not responsive to the question, and we move to strike out the answer.

Q. Middle West Service Company rendered services from time to time for a large number of utility operating companies, did it not?

A. They had a number of operating companies with which they had service contracts.

Q. From the time you came to Middle West Service Company was it your practice to make separate charges to the operating utilities with whom you had service contracts, as distinguished from your percentage charge disclosed in these documents that have been offered in evidence?

A. No.

Q. You did not make a separate charge, but charged them for the year on a percentage basis? A. That is right.

Q. Then if you had to spend money for out of pocket purposes, traveling, whether or not a charge was made for that depended upon the terms of the contract with the particular operating utility? A. Traveling expenses, yes.

Q. The Middle West Service Company was organized for the purpose of complying with the requirements of the Public Utility Holding Company Act, with reference to service companies, is that correct? A. I presume it was.

Q. And its principal clients and practically all of its clients were companies that were formerly affiliated with the Middle West Utilities Company?

Mr. Royhl: Objection, calling for the opinion and conclusion of the witness, not the best evidence, no proper foundation laid.

Mr. Stafford: Irrelevant and immaterial.

A. I think that is true.

CHESTER F. SARGENT, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and deposed as follows:

Direct Examination, by Mr. Benson:

Q. What is your name, please?

A. Chester A. Sargent.

Q. What is your business, Mr. Sargent?

A. You mean my connection with the business?

Q. No, I mean what is your personal business?

A. I am a partner of the firm of Sargent and Lundy.

Q. Will you spell that name for the reporter?

A. Sargent and Lundy, S-a-r-g-e-n-t and L-u-n-d-y.

Q. How long have you been a member of the partnership of Sargent and Lundy?

A. Since November 1st, 1940, when the firm was formed.

Q. Prior to November 1st, 1940, there was a corporation that operated under the corporate name of Sargent and Lundy, Inc.? A. Incorporated.

Q. Inc.? A. No, "Incorporated", spelled out.

Q. Sargent and Lundy, Incorporated, was the full name?

A. Yes.

Q. All right. The partnership has carried on the business theretofore carried on by the corporation? A. Yes.

Q. And the partnership now has all the files and records of the corporation? A. Yes.

Q. You were subpoenaed to appear at this proceeding, were you? A. Yes, sir.

Q. You were asked to produce certain books and records, and certain data from your books, and the books of the corporation? A. Broadly so, yes.

Q. Beg your pardon?

A. Yes. Nothing specific, very specific.

Q. Were you an officer of Sargent and Lundy, Incorporated? A. Yes.

Q. And what was your office in that corporation?

A. Secretary and treasurer.

Q. I call your attention to Plaintiff's Exhibit 5. Will you look at the first few pages, so that you identify the document in your mind?

A. (Witness examines document) Yes.

Q. There was some work done in anticipation of the preparation of Plaintiff's Exhibit 5, I assume?

A. I assume so, yes.

Q. And you have looked for your authorization from someone to do that work, haven't you?

A. Just this morning. I did not realize until I came over here that you desired that information.

Q. But you brought a considerable number of correspondence files with you to this hearing room?

A. Yes, but after getting—after seeing that telegram, seeing it, of Northwestern Public Service Company, I assume that there may be some correspondence in the Northwestern Public Service Company's folders, which we have not here, which may have some bearing on this. I was told last night that Northwestern Public Service Company correspondence would not be necessary. I have not gone through that.

Mr. Benson: If the initial correspondence or communications, if there [way] any, concerning undertaking the work referred to in Plaintiff's Exhibit 5 had been filed elsewhere than in a file under "Northwestern Public Service Company", it would have been in the files which you produced here this morning? A. No.

Q. It would? A. No.

Q. Where would it have been?

A. Been in the files of Northwestern Public Service Company.

Q. If you had not filed it in the Northwestern Public Service Company files you would have filed it in the files you brought here this morning? A. Yes.

Plaintiff's Exhibit 79, which was produced and identified by Sargent, is also referred to as Plaintiff's Exhibit 28 of Sargent's deposition, and was received in evidence with his entire deposition. It reads as follows:

Plaintiff's Exhibit 79.

Western Union Telegram

June 1, 1936

Sargent & Lundy
140 South Dearborn Street
Chicago, Illinois

Arrangements approved for the preliminary survey of system requirements by your engineer at Bismarck Beulah etal with our representative stop can meet you Thursday at Bismarck North Dakota to inspect and survey the sys-

tem plants and hiline layout for your study and report stop advise if your engineer arrive Bismarck on Thursday or otherwise.

NORTHWESTERN PUBLIC SERVICE COMPANY STOKKE

Day letter

Q. It was the practice of Sargent and Lundy, Incorporated, to put a receipt stamp on mail and telegrams coming into the office of that corporation? A. Yes.

Q. And it put on such documents coming into that office a stamp routing the document for attention by someone in the corporation? A. Yes.

Q. Do you know who made the pencil notations on Plaintiff's Exhibit 28?

A. Only in respect to the notation, "Bill to North Dakota Power and Light".

Q. Who made that notation? A. I did.

Q. Now, the two stamps in red that show up on the exhibit are stamps that were commonly used by Sargent and Lundy at that time? A. Yes.

Q. Do you find an original telegram with the same message as Plaintiff's Exhibit 28? A. Yes.

Q. That original is in the same file from which you produced Exhibit 28. A. Yes.

Q. After June 1, 1936, did Sargent and Lundy proceed to make a survey of the properties of North Dakota Power and Light Company? A. Yes.

Q. Was the result of that survey incorporated in Plaintiff's Exhibit 5 for identification?

A. To the best of my knowledge, yes.

Plaintiff's Exhibit 80, which was identified and produced by Sargent, is also referred to as Plaintiff's Exhibit 29 in Sargent's deposition, and was received in evidence with his entire deposition. It reads as follows:

Northwestern Public Service Company
General Offices
Huron, South Dakota

July 13, 1936

Sargent & Lundy, Engineers
140 South Dearborn St.
Chicago, Illinois

Attention: Mr. L. Skog, Chief Mechanical Engineer

Subject: Generating Capacity—Steam & Electric

North Dakota Power & Light Company, Bismarck, N. D.

Wish to acknowledge receipt of your letter of July 10th. in which you request additional copies of prints on the Bismarck station such as may be available. We will search the files tomorrow for such detailed prints as are available in addition to copies previously handed you.

We are having a conference tomorrow and general discussion on the situation with respect to new equipment at Beulah or Bismarck, and, as soon as we have our definite ideas together and agreed upon, will likely immediately have conference with the Chicago office on the matter for a final decision.

I am inclined to recommend the plan, or scheme A-750 H. P. Boiler at the Beulah station, for immediate installation this year. That job could be accomplished without interference in operations and completed probably by December 15th. There are substantial savings to be had in the third boiler installation at the Beulah plant, as well as assurances of added generating capacity by means of the two boiler load and serviceability of both turbines. The relative needs, economics and financing of the various schemes will be shortly reviewed and a decision made following our

discussion of the matter with the Chicago office officials and Mr. Kruesi.

Yours very truly,

By: O. C. STOKKE,
Supt. of Production

OCS:MB

Q. There are two stamps in red ink on Exhibit 29. Will you state what those are?

A. One is the date stamp and the other is the routing stamp.

Q. The date stamp indicates when received?

A. When received.

Q. By Sargent and Lundy, Incorporated? A. Yes.

Q. The routing stamp is the reference to someone to take care of the matter? A. Yes, in the office.

Q. You do not know when the pencil notation, partially on the routing stamp, was put on? A. No.

Q. Do you know Stokke's signature?

A. No, I don't. I could not say I really know his signature.

Q. You are chief financial officer of Sargent and Lundy, Incorporated?

A. Yes, during this time, during the time that we are—

Q. In 1936? A. Yes.

Q. And down to the dissolution of the corporation?

A. Yes.

Q. And you now have charge of the finances of Sargent and Lundy, a partnership? A. Yes.

Q. And the accounting records of the corporation were under your supervision and control, and the accounting records of the partnership were under your supervision and control? A. Yes.

Q. Have you made a computation showing the charges from January 1, 1934, to October 31, 1940, made by Sargent and Lundy, Incorporated, against Middle West Corporation, North West Utilities Corporation, Northwestern Public Service Company, United Public Utilities Corporation, North Dakota Power and Light Company, Northern Power and Light Company, Dakota Public Service Company,

Central and South West Utilities Co., Central Power and Light Co., Peoples Ice Co., Public Service Co. of Oklahoma, Southwestern Light and Power Company, Southwestern Gas and Electric Co., American Public Service Co., West Texas Utilities Co., City Ice Co. of Kansas City, Consumers Ice Co., The Kansas Electric Power Co., Kentucky Utilities Co., Lexington Utilities Co., Lexington Ice Co., Lexington Railway System, Old Dominion Power Co., Old Dominion Ice Corp., Michigan Gas and Electric Co., Middle West Utilities Co., of Canada Ltd., Great Lakes Power Co. Ltd., International Transit Co., National Utilities Corp., Ltd., Northern Public Service Corp., Ltd., Winnipeg Heating Co. Ltd., Wisconsin Power and Light Co., Oklahoma Power and Water Co., Pecos Valley Power and Light Co., United Public Service Corp., Kentucky Power and Light Co., Western Ice Service Co., Central Illinois Public Service Co., Lake Superior District Power Co., Missouri Gas and Elec. Service Co., Missouri Public Service Corp., Central Power Co., Arkansas-Missouri Power Corporation, East Missouri Power Company, Commonwealth Light and Power Company, Inland Power and Light Corporation, The Kansas Power Company, Missouri Edison Company, Michigan Public Service Company, Kentucky Securities Company, Southeastern Greyhound Lines, Southern United Ice Company. A. Yes sir.

Q. Do you have that with you? A. Yes, sir.

Q. Did you also make a statement of the charges by Sargent and Lundy, the partnership? A. Yes sir.

Q. Against the same companies, since the formation of the partnership through the year 1945?

A. Yes, it is not set up separately in that accounting; it is included.

Plaintiff's Exhibit 81, which was identified and produced by Sargent, is also referred to as Plaintiff's Exhibit 30 in Sargent's deposition, and was received in evidence with his entire deposition. This exhibit lists the following companies: Middle West Corporation, Northwestern Public Service Company, North Dakota Power & Light Company, Dakota Public Service Company, Central Power & Light Co., Public Service Co. of Oklahoma, Southwestern Gas & Electric Co., West Texas Utilities Co., Middle West Service Co., The

Kansas Electric Power Co., Kentucky Utilities Co., Lexington Utilities Co., Wisconsin Power & Light Co., Oklahoma Power & Water Co., Central Illinois Public Service Co., Lake Superior District Power Co., Missouri Public Service Co., Central Power Co., Arkansas-Missouri Power Corporation, The Kansas Power Company and Michigan Public Service Company, and shows that the aggregate charges of Sargent & Lundy for engineering services to said companies for the entire period from 1934 to 1945, inclusive, were $1,435,403.57. It further shows that defendant was charged during said period of that aggregate amount the sum of $54,847.03, said charges being $19,425.30 (1941), $5,652.88 (1942), $23,106.61 (1944) and $6,662.24 (1945). This exhibit also shows that North Dakota Power & Light company was charged during said period, of that aggregate amount the sum of $20,252.54, said charges being $1,061.23 (1934), $10,692.53 (1936) and $8,498.78 (1937). The exhibit further shows that Dakota Public Service Company was charged during said period of that aggregate amount the sum of $23,055.79, said charges being $8,558.25 (1939) and $14,497.54 (1940).

Mr. Benson: I show you Plaintiff's Exhibit 30 for identification, and ask you what that is.

A. This is a record or listing of the charges made by Sargent and Lundy, Incorporated, and the firm of Sargent and Lundy, during the years of 1934 to 1945, both inclusive, to the companies included on the list.

Q. Some time ago I gave you the names of a considerable list of companies. The only companies in that long list against whom you found charges on the books of the corporation or the partnership are the companies shown on Plaintiff's Exhibit 30 for identification? A. Yes.

Q. Plaintiff's Exhibit 30 for identification is a compilation of all the charges shown for the years stated on Exhibit 30, against the corporation whose name appears opposite and to the left of the charge, on the same line of the exhibit? A. Yes.

Q. Those figures are all taken from the books and rec-

ords of the corporation for the years the corporation was in existence? A. Yes.

Q. And for the firm since the firm was organized?

A. Yes.

Q. And those figures are true and correct statements of the charges for the years indicated against the corporations indicated, as shown by the books of the corporation?

A. Yes.

Q. During the time it was in existence? A. Yes.

Q. And as shown by the books of the firm, since its organization? A. Yes.

Preliminary Examination, by Mr. Stafford:

Q. Mr. Sargent, do these figures also include disbursements made by Sargent and Lundy? A. Yes sir.

Q. In other words, this represents the billing for the services rendered, including out of pocket, your out of pocket? A. Yes.

Examination, by Mr. Stafford:

Q. Mr. Sargent, referring to this compilation marked Plaintiff's Exhibit 30, I take it that this does not purport to represent all of the billings which Sargent and Lundy, Incorporated, and after November, 1940, Sargent and Lundy, a partnership, made to all of their clients for services performed during the years 1934 to 1945? A. No.

Q. Both the corporation and the partnership had other clients during those years? A. Yes.

Q. Did you render services to them during those years?

A. Yes.

Q. And make billings? A. Yes.

Q. Were such other billings substantial— A. Yes.

Q. (Continuing) —in addition to these? A. Yes.

Mr. Stafford: That is all, Mr. Sargent, thank you.

H. M. ELVIG was called as a witness by the plaintiff, and sworn and testified as follows:

Direct Examination, by Mr. Fellows:

Q. Where do you live, Mr. Elvig?

A. Minneapolis, Minnesota.

Q. How old are you? A. 50.

Q. What is your occupation?

A. I am General Auditor, Montana Dakota Utilities Co.

Q. How long have you been doing auditing work for the plaintiff company?

A. I have been employed by the plaintiff company for about twenty-three and one half years.

Q. You have supervision of their auditing? A. Yes.

Q. Are you familiar with the method and the general scheme of record keeping and auditing or records of power companies? A. Yes, I have done that work all of my life.

Q. During this period of time have you worked with the Federal Power Commission? A. Yes, very frequently.

Q. State whether or not the records of power companies are practically uniform because of being under Federal Power Commission classification and rules?

A. Since 1936 they are about as alike as two peas. They are all in exactly the same form.

Q. Are you accustomed to analyzing records of the kind which we have been going over for the last few days here in this court? A. Yes, that is my regular work.

Q. State whether or not you have had experience in allocating costs of construction in power company work?

A. Yes.

Q. And analyzing construction costs? A. Yes, regularly.

Q. Was there a time, after the purchase by the plaintiff company of the Dakota Public Service Co. properties, that the books and records of the Dakota Public Service Co. came into your possession?

A. We got the books about three months after.

Q. It was testified here by one of the officers of the defendant company that it was thought to be about March after the purchase? A. That is right.

Q. That was in 1945, was it not?

A. The purchase was in 1945.

Q. And you received the books early in 1946? A. Yes.

Q. Do you have those books and records in your possession now? A. Yes.

Q. Do they include the books and records of the North Dakota Power & Light Co., and the Northern Power & Light Co. and also the Dakota Public Service Co.? A. Yes.

Q. Are they in the same condition they were when they were turned over to you? A. Yes.

Q. Was there a time within the last couple of years you made a partial audit of the records of the defendant company at Huron, South Dakota? A. Yes.

Q. Did you become familiar with the defendant corporation's method of keeping the records and books?

A. Yes, I did.

Q. State whether or not they are practically the same as the method of the Dakota Public Service Co., in keeping its records and books?

A. They were in identical form, yes.

Q. They were practically the same, were they?

A. That is right.

Q. State whether or not you have made a study over these years of experience and became acquainted with the general operations of public service companies?

A. My earliest experience was with small operating companies and after about two years in the general office in Minneapolis I was sent out to the property at Williston, by Mr. Gamble to develop accounting arrangements at that point. Our division manager at that time was a man who had a number of other interests and was frequently away from Williston, and made it necessary for me to take over the duty of division manager, probably thirty per cent of the time.

Q. Are you familiar with the operating problems of electric utilities companies? A. Yes, I think so.

Q. In addition to their construction problems?

A. I would say I had a very broad general knowledge of the business.

Q. Do you have these books and records which came into your possession that you have just testified to, here in court?

A. We have that portion of the records which we think

will be vital to this case, and all of the records which were included in the subpoena.

Q. Where are they, in the room just off the court room?

A. In the petit jury room, yes.

Q. Did you make an audit of those books and records and make computations from them? A. Yes.

Q. Were the conclusions and computations which you made based on your personal audit of those records?

A. Yes.

Q. And likewise, were they partially based on your examination of the defendant corporation's records at Huron?

A. That is right.

Q. Mr. Elvig, do you have all of the books and records that were turned over and came into your possession of the Dakota Public Service Co., including the Northern Power & Light Co. and North Dakota Power & Light Co., that you testified to here in court?

A. I have those that I referred to, yes.

Q. Do you have all of those from which you have made any deductions or computations of any kind? A. Yes.

Q. Do you have here all of the matters that were called for in subpoena or order to produce that was served upon you by defendant?

A. We have all except such as I notified defendant's counsel I have been unable to locate.

Q. Will you step down here and state to the record as we pass along this bunch of exhibits, the general classification or about what they consist of?

Mr. Fellows: Your Honor, for the sake of convenience I would like to have them marked as Exhibit 82, the whole mass of them.

The Court: Very well.

Q. Will you examine this mass of records contained in the nine boxes and cartons?

A. The first six boxes contain power plant log sheets, and similar power plant records of which I have made an inventory. The seventh box contains, apparently, standby power station logs, or what we call efficiency reports. The eighth box contains stock certificate books of Knife

River Coal Mining Co., Northern Power & Light Co., and North Dakota Power & Light Co. and Hughes Electric Co. It also contains report on form entitled "Monthly Report of Electric Stations." Northwestern Form 11. This box also contains reports to Federal Power Commission on form FPC No. 1. This small box on the chair contains records of North Dakota Power & Light Co. showing sales to the Northwestern Public Service Co., and supporting ledger sheets. It also contains journal vouchers of Northern Power & Light Co. showing its transactions in interchange of power and capacity with Northwestern Public Service Co., and it contains Northern Power & Light journal vouchers covering purchased power. Those five files of statements in heavy cardboard cover contain the operating reports of North Dakota Power & Light Co., Northern Power & Light Co. and Dakota Public Service Co. from January 1, 1930 to October 19, 1945. I should say September 30th. This contains to October 19, 1945. In this pile we have six books heavily bound in what appears to be red leather, one of them blank, is the second minute book of the Northern Power & Light Co. succeeded by the third and fourth volumes. Those three volumes cover the entire period involved in this litigation and up to the time Northern Power & Light was merged with North Dakota Power & Light. The other three books of similar appearance are minute books of Hughes Electric Co., North Dakota Power & Light Co. and Dakota Public Service Co., which is all one corporation with separate names. The fourth minute book is in evidence. I have here three volumes, similar to the others which are financial statements for the month of December for Northern Power & Light Co., North Dakota Power & Light Co. and Dakota Public Service Co. for the entire period from 1930 to 1944, and this blue covered pamphlet is the statement for the period of 1945 ending October 19, 1945. Then we have the power plant ledger sheets showing construction costs of the several power plants. I think that covers all of the records.

The foregoing mass of records described by Elvig was offered and received in evidence without further specific marking or identification as to each document.

Q. Have you made a determination or study to determine the movement from Aberdeen of defendant's energy into North Dakota? A. Yes, I have.

Q. From January, 1937, to the time of purchase of the North Dakota Public Service Co. properties? A. Yes.

Q. From what records did you make such study?

A. To the extent they were available to me. The dispatchers' log books for a limited period of two years. Primarily from the Aberdeen station log.

Q. Were you able to determine from those records such movement of energy into North Dakota? A. Yes.

Q. Can you tell to a certainty from any of such reports and records the movement of such energy? A. Yes.

Q. And from what reports and records?

A. From the Aberdeen station log sheets.

Q. Without giving any figures, can you state whether or not those movements of energy varied during that period of time?

A. It varied a great deal with conditions.

Q. Did it vary from substantial to trivial amounts?

A. Yes.

Q. Just going back a minute. This determination of the flow of energy from Aberdeen to North Dakota. Refer to that. You were able to determine that from these records contained within Exhibit 82? A. Not Exhibit 82, no.

Q. Exhibit 55, that is in evidence.

A. I believe that is the number. These records here.

Plaintiff's Exhibit 83, which was received in evidence, reads as follows:

Plaintiff's Exhibit 83.

Certificate.

I, the undersigned, Secretary of the Public Service Commission of the State of North Dakota, hereby certify that I have custody of the official records and public utility contracts filed with said Commission and that I have custody of the official records and public utility contracts which were originally records of the Board of Railroad Commissioners of said State and that, after diligent search, no record or entry appears of the filing with said Com-

mission or with the Board of Railroad Commissioners of the State of North Dakota of agreements between North Dakota Power & Light Company and Northern Power and Light Company relative to rates charged by North Dakota Power & Light Company against Northern Power and Light Company for energy furnished to Northern Power and Light Company, and that there is in the files of the Public Service Commission of the State of North Dakota no record that said Commission or the Board of Railroad Commissioners of the State of North Dakota ever approved any rate agreements or contracts of any kind between North Dakota Power & Light Company and Northern Power and Light Company.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Public Service Commission of the State of North Dakota this 13th day of October, 1947.

ELMER OLSON,
Secretary of the Public Service
Commission of the
(Seal) State of North Dakota.

Plaintiff's Exhibit 84, which was received in evidence, reads as follows:

Plaintiff's Exhibit 84.

Certificate.

I, the undersigned, Secretary of the Public Service Commission, State of North Dakota, hereby certify that I have custody of official records and public utility contracts on file with this Commission, and that after diligent search, no record or entry appears of agreements of any kind between Northern Power & Light Company and Northwestern Public Service Company, North Dakota Power & Light Company and Northwestern Public Service Company, or Dakota Public Service Company and Northwestern Public Service Company having ever been filed with this Commission or submitted to it for its approval pursuant to the provisions of Section 49-407 of the North Dakota Revised

Code of 1943 or the Session Laws of the State of North Dakota for 1919, Chapter 192, Section 16, being Section 4609c16 of the 1925 Supplement to the 1913 Compiled Laws of the State of North Dakota.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Public Service Commission of the State of North Dakota on this 15th day of September, 1947.

ELMER OLSON,
Secretary of the Public Service
Commission of the
(Seal) State of North Dakota.

Q. Mr. Elvig, state whether or not the records which are Exhibit 82 in evidence, and also which are Exhibit 55, in evidence, disclose the amounts which were paid by the defendant direct to North Dakota Power & Light Co. for energy for June to December, 1930, and January, February and March, 1931? Just say whether or not they do.

A. Yes, they do.

Q. Which of the said records disclose that?

A. Certain ledger sheets and vouchers which I specifically described when I enumerated the exhibits.

Q. Will you produce such vouchers? Are the documents which are included within the rubber band, and the front marked Plaintiff's Exhibit 82-1, the journal vouchers to which you refer? A. Yes, they are.

Plaintiff's Exhibit 82-1 was marked for identification and received. It consists of 8 journal vouchers of North Dakota Power & Light Company for each month during the period from June, 1930 through February, 1931, recording the revenue of said company, including its sales to Northern Power and Light Company and to defendant during said period.

Q. Are the ledger sheets which are bound together under Plaintiff's Exhibit 82-2, the ledger sheets you referred to as also containing this information?

A. All of that side of the transaction which states the obligation of Northwestern Public Service Co. to North Dakota Power & Light Co. This is the one I thought I had.

Plaintiff's Exhibit 82-2 was marked for identification and received. It consists of 17 Subsidiary Ledger Sheets of North Dakota Power & Light Company commencing with January 1, 1930, and continuing through December of 1938 which show therein the obligations of defendant to North Dakota Power & Light Company for energy received by defendant during the period commencing June, 1930, and ending February, 1931.

Q. Are Exhibits 82-1 and 82-2 the records from which you were able to determine the amount paid direct to North Dakota Power & Light Co. by defendant for energy during the periods from June to December, 1930 and January, February and March, 1931? A. Yes, they are.

Mr. Fellows: We offer in evidence Plaintiff's Exhibits 82-1 and 82-2.

Mr. Royhl: To which the defendant objects as being too remote from the matters in issue, and not proof of the reasonableness or unreasonableness of the rates and charges involved in the issues in this litigation and no proper foundation laid upon which a comparative basis or relative basis of the reasonableness of rates in issue with rates as of six directors thereto; no foundation at all as to conditions, terms or restrictions or time of delivery of energy; wholly incompetent, irrelevant and immaterial, and certainly not within the issues of this case.

The Court: Objection overruled.

Q. Are you able to state from those records the rates per kilowatt hour which were paid for such energy?
A. Yes.

By Mr. Royhl: Q. You include March. Do you have any March vouchers here?

A. I included March for the reason that he said purchased and paid. The February revenue was paid in in March. The ledger sheet shows that.

Q. You don't claim, however, any journal vouchers for the month of March, 1931, within the rubber band here that attaches to Plaintiff's Exhibit 82-1? A. That is right.

By Mr. Fellows: Q. State the rate?

Mr. Royhl: We object to this for all the reasons heretofore urged to the exhibits themselves, 82-1 and 82-2, for the reason there is no proof of the terms and conditions or restrictions in the rate charged, and entirely too remote and not within the issues in this case; no proper foundation laid; and not the best evidence.

The Court: Overruled.

A. May I see the entries? The rate for power sold to Northwestern Public Service Co. is three fourths cent per kilowatt hour.

Q. Are you able to determine from these records the amount for each month, beginning June 1930, to December, 1930 and for January, February and March, 1931?

Mr. Royhl: Same objection last made in full.

The Court: Same ruling.

A. Yes.

Q. State whether or not that three fourths cent per kilowatt hour was the rate paid during all of this time?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. Yes, three fourths cent all of the way.

Q. Have you prepared a compilation of the amounts paid for each month during the period you have mentioned? A. Yes, I have.

Plaintiff's Exhibit 85 was marked for identification. It reads as follows:

Plaintiff's Exhibit 85 (Page 553)
is shown on Card 11.

Q. Does Plaintiff's Exhibit 85 contain the compilation or computation or figures I just asked you about? A. Yes.

Q. What portion of it contains those figures?

A. The last five columns.

Q. Was this made from Exhibits 82-1 and 82-2? A. Yes.

Q. And is it correct as the figures were taken for computation purposes? A. Yes, it is accurate.

Mr. Fellows: We offer in evidence Exhibit 85, the last five columns together with the dates in the first column, and the figures in the fourth column.

Q. Are the figures or dates in the first column the months which are extended into the last columns which I have offered? A. Yes.

Mr. Fellows: We offer in evidence Exhibit 85.

Mr. Royhl: May we have the same general objection that has been urged as against all of this line of testimony, concerning sales made inter-company in 1930 and 1931, and any of the records or details with respect thereto?

The Court: The record may show you have the same objection to that line of testimony or evidence and the same ruling of the Court.

By Mr. Fellows: Q. Will you state to the record the amount paid by defendant to North Dakota Power & Light Co. for each of said months, taking a month at a time?

Mr. Royhl: We object to that as not the best evidence, the record of it is in evidence and he is merely reading from an instrument now offered and received in evidence.

The Court: I don't know whether the instruments might be so they can be figured out, but I don't think there should be any objection to having this accountant testify about his finding from the records. Objection overruled.

A. For June, 1930, $296.93; for July, $2,247.00; for August, $714.22; for September, $728.67; for October, $1,735.00; for November, $593.85; for December, $1,974.15; for January, $2,960.19; for February, $2,327.57.

Q. What is the grand total of the payments?
A. $13,577.58.

Q. Do you know when North Dakota Power & Light and Northern Power & Light were interconnected at Keldron and Driscoll? A. Yes, the approximate date.

Q. When? A. In the fall of 1928.

Q. State whether or not, if you know, whether the predecessor to North Dakota Power & Light was Hughes Electric Co?

A. It is the same company with a change of name.

Q. Are you able to state from anything you found in Exhibit 82 when the interconnection facilities started between the defendant company and the northern companies? Construction? A. Not from Exhibit 82.

Q. In what portion of the exhibits can you make that determination? Is it in Exhibit 55?

A. It is in this group of records here.

Q. That is Exhibit 55? A. Yes.

Q. Were you able to find that from Exhibit 55? A. Yes.

Q. From what portion of Exhibit 55?

A. There is a folder here with a number of work orders in it.

Q. From the work orders? A. Yes.

Q. When did the construction of such interconnection facilities start, as shown by those records?

A. The work was completed approximately September, 1930.

Q. Commenced when? A. Along in October, 1929.

Q. Have you read Exhibit B attached to plaintiff's complaint to this action? A. Yes, I have.

Q. State whether or not the facilities, as shown by Exhibit 55, are the same facilities referred to in said Exhibit B to the complaint? A. Yes, they are.

Q. Do you know whether or not the defendant company was making an application for franchise in Pierre, South Dakota? A. Yes.

Q. From what, aside from your independent knowledge, from what, if anything, can you make that statement?

A. Aside from my independent knowledge, it was common knowledge in the industry.

Q. Were you able to find anything in Exhibit 55, or Exhibit 82, that give you any information on that?

A. I have a recollection of my examination of the records of Northwestern Public Service in Huron, about November, 1946.

Q. Where did you get the work order marked Exhibit 55-6?

A. I got it out of an envelope produced by the defendant in Exhibit 55.

Plaintiff's Exhibits 55-6 and 55-7 were each received in evidence. Plaintiff's Exhibit 55-6 is in part as follows:

Plaintiff's exhibit 55-6 (pp.557-559) shown on Card 11.

Blank Pages

558, 560

Plaintiff's Exhibit 55-7 is a carbon copy of the work order included in Plaintiff's Exhibit 55-6 as hereinabove reproduced.

Q. Can you tell the Court generally what Exhibit 55-6 and the carbon copy, Exhibit 55-7, are?

A. It is the construction authorization for construction of part of these interconnection facilities in the general area of Highmore.

Q. Has there been any changes, erasures or alterations of any kind made in either 55-6 or 55-7, from the time they were taken from Exhibit 55, produced by the defendant, in this court at this trial until the present minute? A. No.

Q. You got those from Exhibit 55, did you not? A. Yes.

Q. Were the erasures that appear on Exhibit 55-6 and 55-7 present on each of those at the time you took them from Exhibit 55 here in court? A. Yes.

Q. Are you able to decipher from either one of these exhibits, or both, the words that were erased in the exhibits?

A. Yes.

Q. What word or words were in there at the point of erasure?

A. The words which have been removed from Exhibit 55-6 and 55-7 are "and Pierre".

Q. When did you first see those erasures?

A. When I examined the records of the defendant in connection with my examination authorized by the state court in November, 1946.

Q. That examination was made in the office of the defendant company at Huron? A. Yes.

Q. And were the erasures then the same as they were when you pulled them out of Exhibit 55 here in the court room? A. Yes.

Plaintiff's Exhibit 86, which was received in evidence, consists of 14 pages of certain proceedings taken by the City Commission of the City of Pierre, South Dakota, relating to an application by defendant for a franchise to maintain and operate in said city an electric light, heat and power plant, transmission lines, substations and distribu-

tion systems for the operation, distribution and sale of electricity for light, heat, power and other purposes in and through said city, and fixing the date of such franchise election on September 3, 1929.

Mr. Fellows: This exhibit, Your Honor, being No. 86, relates to the application for the franchise, applied for by the defendant company, in the city of Pierre, which we explained in the opening statement herein, that that was the determining factor for the interconnection facilities contract. We offer in evidence Exhibit 86.

Q. From either Exhibit 82 or Exhibit 55, or both, state whether or not you were able to determine whether energy flowed both ways, from the year 1930 on to and including 1945, at the time of the purchase of Dakota Public Service Co.? A. I don't understand what you mean by both ways.

Q. Were you able to determine whether or not Northwestern Public Service Co. energy flowed up into North Dakota, and Northern Power & Light Co. energy flowed down into South Dakota? A. Yes.

Q. From what records could you make that determination?

A. From the record of the generation of the plants, and from the record of interchange billing between companies.

Q. Do the records show which company, year after year, and each year, got the most or less energy? Whether it was the defendant company or the northern company?

A. Yes, it does.

Q. Do you find in those exhibits some records which will show the amounts and by years, the transmission and receipt of such energy?

A. Yes. I summarized them in a tabulation.

Q. Did you make the compilation of the amounts of such energy, year by year, from the records in Exhibit 82?

A. Yes.

Q. Is Exhibit 87 such compilation you made? A. Yes.

Plaintiff's Exhibit 87 was received in evidence and reads as follows:

Plaintiff's Exhibit 87.

Summary of Interchange of Energy Between Dakota Public Service Company (and Its Predecessor) and Northwestern Public Service Company

Year	KWH to Northwestern	KWH from Northwestern	Net KWH to Northwestern
1930	1,227,395	231,449	995,946
1931	3,535,609	1,051,060	2,484,549
1932	4,491,000	1,724,880	2,766,120
1933	5,781,400	1,574,840	4,206,560
1934	4,826,100	1,893,120	2,932,980
1935	5,854,200	2,180,960	3,673,240
1936	5,091,200	3,591,660	1,499,540
1937	6,239,169	2,590,260	3,648,909
1938	6,251,670	2,142,540	4,109,130
1939	6,676,475	2,421,880	4,254,595
1940	7,044,662	1,982,340	5,062,322
1941	11,314,400	1,380,684	9,933,716
1942	12,102,000	1,006,460	11,095,540
1943	11,621,100	1,319,940	10,301,160
1944	10,883,300	1,428,900	9,454,400
1945	8,847,500	1,265,300	7,582,200

Q. State whether or not this photostatic copy, Exhibit 61, is a true and correct copy of the minutes of the meeting of the directors on October 7, 1936, which is referred to and as they appear in the minute book, No. 3, which I have called your attention to?

Q. (Con't) With the exception of the signatures which are absent from the photostatic copy, Exhibit 61?

A. Yes. I have compared them and they are the same except for signatures.

Plaintiff's Exhibits 82-3 A, B and C were received in evidence, consisting of 3 original pages from the minute book of Northern Power and Light Company and comprising the waiver of notice and minutes of the meeting of directors of that company held October 7, 1936. It is identical with Plaintiff's Exhibit 61 except that the signatures appear on the waiver, which waiver, with signatures, is as follows:

Northern Power And Light Company

Special Meeting Of The Board Of Directors

Consent And Waiver Of Notice.

We, the undersigned, being all the Directors of Northern Power and Light Company, a Delaware corporation, do hereby consent that a special meeting of the Board of Directors of said corporation be held at 11:00 o'clock A. M., on the 7th day of October, 1936, at the office of the corporation, National Bank of Huron Building, Huron, South Dakota, for the transaction of such business as may be brought before the meeting; and we do hereby severally waive all notice of the time, place and object of said meeting.

Dated October 7th, 1936.

F. E. KRUESI
C. J. STRIKE
C. L. SANDSTEDT
SAMUEL W. WHITE
M. C. BLACKSTUN

Q. Do you know from any independent knowledge or from any information you got from these records, they at that time were also directors of the defendant corporation? A. Yes.

Q. Which ones were such dual officers?

A. As near as I can recall, Mr. Kruesi, Mr. Strike and Mr. Sandsteadt.

Q. State what officers of the Northern Power & Light Co. signed the minutes of the special meeting, which are shown as Exhibit 82-3-B?

A. Mr. F. E. Kruesi, president. C. L. Sandstedt, Secretary.

Q. What offices did they hold with the defendant corporation at that time, if you know? A. Same offices.

Q. Were you able to determine from any of the records that came into your possession when the first payment was made to the defendant under the interconnection contract?

A. Yes.

Q. Or any interconnection contract? A. Yes.

Q. From what record did you get that information?

A. The payment reflected on the ledger sheet.

Q. Have you the ledger sheet which reflects the first payment? A. Yes.

Q. Will you get it, please? A. I have it.

Q. When you refer to the interconnection contract, do you refer to the contract which is in evidence as Exhibit 18, and bears date of October 7, 1936? A. Yes.

Q. When was the first payment made on that contract, that contract of October 7, 1936?

A. In February, under voucher, 2-74.

Q. Is that the same contract which the evidence shows here was filed with the Federal Power Commission about two years later, to wit: On December 23, 1938?

A. Yes, it bears their stamp.

Q. Now, you say the first payment was made in February, 1936? A. Yes.

Q. Was that the payment for January, 1936, according to the records?

A. Yes, because that payment closed the account.

Q. Were payments made in each successive month after February, 1936?

A. Yes. The account appears closed each month.

Q. And up to what date were those payments continued each successive month?

A. On Northern Power & Light Co. until the merger.

Q. Give the date of that again? A. June 30, 1939.

Q. What was the amount of each such monthly payment?

A. For two months out of each quarter, $1666.67, and for one month it was $1666.66.

Q. Were you able to determine from some of the records of the company, the flowage of energy from South Dakota to North Dakota and vice versa?

A. Not from the records of the company.

Q. Were you able to ascertain that from any log sheets of the defendant corporation? A. Yes.

Q. Was that from the Aberdeen power plant log sheets?

A. That is right.

Plaintiff's Exhibit 55-8 was offered and received in evidence showing energy exchanged in 1943 between the defendant and Dakota Public Service Company crossed the North Dakota-South Dakota state line, flowing across the line Northerly as well as Southerly.

Q. Can you tell from an examination of the Aberdeen power station log sheets whether or not energy did flow from the defendant company into North Dakota, and from the North Dakota Power & Light Co. in North Dakota into South Dakota? A. Yes.

Q. Is Exhibit 55-8 a computation you made from the Aberdeen station or power plant log sheets, which is a part of Exhibit 55? A. It is the tabulation.

Q. What year does that cover, or what portion of such year?

A. It covers specified hours or specified days throughout the year, as shown in the first and second column on the various sheets.

Q. Were these figures, are they as they appear in that record? A. Yes.

Q. They are accurate, are they? A. Yes.

Q. When were they taken from the record?

A. I took those off, I think, along, it seems to me, last spring. I am not certain when I was there last time.

Q. Does Exhibit 55-8 show the movement of energy from North Dakota to South Dakota and vice versa?

A. It shows information from which positive conclusions can be drawn.

Mr. Royhl: Move to strike that out as not a question of accounting and no proper foundation laid for any expert testimony here concerning foundation for any testimony; not responsive to the question; self serving and hearsay as to this defendant.

Mr. Fellows: He is more than an accountant.

The Court: I don't think the answer is responsive.

Mr. Fellows: We offer in evidence Exhibit 55-8.

Mr. Royhl: As to Exhibit 55-8, we object to that as immaterial.

The Court: Objection overruled.

Q. Will you explain the significance of the entries in the columns of that so it will be plain to the Court?

A. The first column shows the month and the date of the month, and the second column the hour or hours of the day of which I extracted information from the several log sheets. The third and fourth columns have combination heading which reads "Readings from indicating meters in kilowatts." That is divided into two columns, one marked "West Line" and one marked "north line". And these readings that appear opposite the various hours are entries made by the operator in the Aberdeen plant of his observation from instruments in the plant regarding the flow of energy between the Dakota Public Service Co. and dividing that flow between the line going west and the line going north. The last column shows the measured energy for the same specified hours, and that last column shows the total flow on both the west and north line. The readings on the west line and the north line are similar to what you observe on your car if you were riding, the rate over here at which your car was travelling, the reading in the last column is similar to the number of miles you travelled in that area. Beyond that, from having observed all of the load diagrams—

Mr. Royhl: We object to this testimony as no proper foundation laid for this man to testify as an expert concerning the result of the findings that he has tabulated, and it is not responsive to the question.

The Court: He is qualified as an expert accountant in this line of work. He is now being asked to explain how he obtained from certain proffered exhibit the information or findings which he has or expects to testify concerning. Objection overruled.

Mr. Royhl: As I understand it, that does not permit him to testify what the result would have to be by an analysis of them.

The Court: The question was for him to explain from the proffered exhibit in arriving at his findings. He can tell what the exhibit shows to him and how he applied that knowledge in arriving at his conclusion. Objection overruled.

A. (Con't) From an examination of the load diagrams that have been introduced into this record and made available to us, it is an easy matter to determine the peak load on that part of the line north of Aberdeen, which is in South Dakota, and you can also make a determination from that, with ordinary knowledge of the business, what the normal load would be at almost any hour of the day. By a meter—

Mr. Royhl: We object to this for all of the reasons heretofore urged, that he is not testifying concerning his data now. He is testifying concerning something else.

The Court: He is testifying how, from the information in the proposed exhibits, he arrived at his conclusions. He has a perfect right to do it. Objection overruled.

A. (Con't) From the figures which I was quoting just before the interruption, you can determine that there was an excess flow beyond the requirements of the entire market north of Aberdeen to the state line. And this exhibit shows those hours and days when I was satisfied that the flow was sufficient to go into North Dakota. It does not include all of the days but it includes enough of them to show consistency and regularity. This exhibit here is for one year and there are figures available for quite a few years.

Mr. Royhl: At this time defendant moves to strike the testimony of this witness concerning his findings or conclusions, as not responsive to the question first asked, no proper foundation laid therefor, it not appearing that that is predicated upon the Exhibit 55-8, and not appearing by identification as to what he based this opinion upon, and that there is no foundation laid for this witness as an

expert to testify concerning matters covered by this testimony.

The Court: I assume the answer of the witness is an explanation of the exhibit. I don't know what the identifying number of the exhibit was. I assume it was the exhibit that was under consideration when the question was asked. If it is, the objection is overruled. In response to the question that was asked him I don't think he would be justified to put in anything except what he had been considering before. I don't understand he was.

Q. From your examination of these various records and your audit of these various records, did you find service contracts with the receiver of Middle West Co. and Middle West Service Co., covering engineering expense and supervision payments for the years 1933 to 1945?

A. I found some of them.

Q. Are you able to state from any records which you examined or audited in Exhibit 55, or in Exhibit 82, which disclosed the amount of payments each year for engineering expense and supervision, to the receiver of the Middle West Service Co., or its predecessors from 1933 to 1945? A. Yes.

Mr. Royhl: Objected to as immaterial and not within the issues in this case.

Mr. Fellows: The purpose of it, when I develop it, is to show that our companies were not getting independent advice. They were getting advice from defendant's own experts.

The Court: There is an answer in the record. Let it stand.

Q. What records did you find those items of expense in?

A. Vouchers and accounts payable sheets for each company to the Middle West Service Co., and the various organizations in receivership and so on, which had offered that service.

Q. In whose records?

A. In the records of the plaintiff, Northern Power &

Light Co., North Dakota Power & Light Co., and Dakota Public Service Co.

Q. In Exhibit 82? A. That is right.

Q. From what portions of those records were they? Vouchers and what else?

A. Vouchers and accounts payable ledger sheet which ran from the various companies to Middle West and its predecessors, and from the expense ledger sheets. I have a summary of them.

Q. Did you make a computation or summary of those figures? A. I have a tabulation.

Q. Did you make it from this portion of Exhibit 82 you have testified about? A. Yes.

Q. Does it correctly reflect the entry shown in that Exhibit 82? A. Yes.

Q. Does such tabulation appear in Plaintiff's Exhibit 82-4? A. Yes.

Plaintiff's Exhibit 82-4 was marked for identification. It consists of a tabulation of the amounts paid by North Dakota Power & Light Company and Northern Power and Light Company for management and supervision fees by months for the period commencing November, 1933, and continuing to October 19, 1945, such payments being made to the receivers of Middle West Utilities Company during 1933 and 1934, to the temporary trustees of Middle West Utilities Company in 1934, 1935 and 1936, and to Middle West Service Company during the balance of said period.

Mr. Fellows: We offer in evidence Exhibit 82-4.

The Witness: I would like to make a correction in my testimony. I didn't use the vouchers. I used accounts payable ledger sheets and expense ledger sheets.

Mr. Royhl: Objected to as immaterial; not within the issues in this case; no proper foundation laid, there being no indication or identification of the record from which the same was taken.

The Court: Objection overruled.

Q. Will you state from Exhibit 82-4 the amount of such management and supervision fees paid by each year, and as a total, commencing with 1945 and reading backwards?

Mr. Royhl: To which the defendant objects as being unnecessary duplication and encumbrance of the record; not the best evidence; and for all of the reasons urged to the exhibit itself.

The Court: We will take an answer. Overruled.

A. For the fractional portion of the year from January 1, 1945 to October 19, 1945, $9,070.64; for the year 1944, $13,238.07; for the year 1943, $12,386.80; for the year 1942, $12,464.43; for the year 1941, $12,461.77; for the year 1940, $11,966.09; for the year 1939, and prior years, those figures would include Northern Power & Light and North Dakota Power & Light, $11,263.22; for 1938, $10,807.71; for 1937, $10,502.04; for 1936, $5,427.59; for 1935, $7,272.93; for 1934 the exhibit shows two amounts, one for the receivers and one for temporary trustees, which together amounts to $7,764.73; for 1933, $2,723.97, which I believe dates back to August, the first four months are included in the November bill. The total of all of them is $127,249.99.

Q. Did you examine the minute books which contain the records of the directors' meetings of the North Dakota Power & Light Co., Northern Power & Light Co. and Dakota Public Service Co. for those entire periods?

A. Yes, I did.

Q. State whether or not as disclosed by those minutes, Samuel W. White ever attended a single one of the directors' meetings or any one of these companies?

A. The minutes did not disclose that he ever attended a meeting.

Q. Of any one of these companies?

A. Of any one of them.

Q. Can you state from your examination of these records when the first charge for interconnection was made?

A. Yes.

Q. What was the date?

A. The charge was for the month of January, 1936.

Q. Was there any charge as shown by the books made prior to that time? A. No.

Q. Did you find the work orders for the rebuilding of the Bowdle Ipswich line? A. Yes.

Q. Will you produce those, please? Does your record show when that line was rebuilt? A. Yes.

Q. What year? A. 1940.

Q. Does the record show when the Bowdle substation was rebuilt? A. Yes.

Q. At what cost?

Mr. Royhl: May we add to the objection it is incompetent and immaterial, and not within the issues in this case.

Mr. Benson: You have a retroactive contract concerning interchange of excess capacity. We are going to prove that they had excess capacity and you never paid them anything. We are going to prove some other things.

Mr. Fellows: Our purpose is to show on this one item we spent $46,000.00 for interconnection facilities for a line they got the benefit from, upon which we received no credit whatever, at any time, or any kind.

The Court: I have overruled the objection.

Q. At what cost?

A. This substation was built in segments. The total cost $46,529.96.

Q. During what period of time?

A. During 1941 and early 1942.

Q. Now, getting back to this Bowdle Ipswich line, in what year, if at all, does the record show that line was built? A. From Bowdle to Ipswich?

Q. Yes? A. It was rebuilt in 1940.

Q. Do you know whether or not that was a part of the interconnection system?

Mr. Royhl: Objected to as calling for the conclusion and opinion of the witness; no proper foundation laid.

The Court: He asks him if he knew. Objection overruled.

A. Yes.

Q. Was it? A. Yes.

Mr. Royhl: Same objection.

The Court: There is an answer in the record. Let it stand.

Q. Do those same records show whether or not the Dakota Public Service Co. built between Bowdle and Selby a fourth conductor? A. Yes.

Q. In what year was that installed? A. In 1940.

Q. Do they show the cost of such fourth conductor?

A. Yes.

Q. What cost do they show? A. $1928.98.

Q. Were those figures likewise taken from Exhibit 82?

A. Yes.

Q. Do the records show the cost of rebuilding the line from Bowdle to Ipswich in 1940? A. Yes.

Q. What cost do they show that?

Mr. Royhl: May we have the same general objection to this line of testimony?

The Court: I understand you have that in the record, but you can have it again.

A. The work order shows cost, approximately $55,000.00, but there are a number of qualifying entries, so I have selected the final figure, smallest figure, which is $50,851.11.

Q. Do the same records show that Dakota Public Service Co. also changed transformer on the Frederick to state line line? A. There is a record of change of voltage.

Q. Is there an increase of voltage? A. Yes.

Q. What is the approximate total of these figures that you have just given separately for the rebuilding of the Bowdle substation, the Bowdle to Ipswich, rebuilding that line, and the transformer and fourth conductor?

A. About $97,000.00.

Q. What, if anything, do the records show about the rebuilding of the line from Wishek to Bowdle?

A. That was rebuilt in 1935-1936, while the Northern Power & Light Co. was still in existence.

Q. Does it show the cost of that? A. Yes.

Q. What cost does it show?

Mr. Royhl: Objected to as not the best evidence; incompetent, irrelevant and immaterial; not within the issues in this case; no proper foundation laid.

The Court: He can testify as to what the records show.

A. For the oil circuit breakers, $15,821.40. For the line Wishek to Bowdle, $111,823.01. Total $127,694.45.

Q. From what records did you get those figures?

A. From the work orders.

Q. Part of Exhibit 82? A. Yes.

Q. Did you examine the records to ascertain, if possible, the cost of the interconnection expense under the contract of October 7, 1936, of the interconnection facilities?

A. You mean cost of the Northwestern Public Service Co. investment?

Q. Yes, the Northwestern Public Service Co. investment.

A. Yes.

Q. And Exhibit B of the complaint is, is it not, the interconnection contract of October 7, 1936? A. Yes.

Q. That is the contract I am referring to. Did you find among the records, items from which you made a computation of the cost of construction of those facilities under that contract?

A. From the records of Northwestern Public Service Co.

Q. From the defendant's records which are in here as Exhibit 55? A. Yes.

Q. And from what portion of their records did you find these records?

A. From the property ledgers, the work order ledgers, the work orders themselves, and inspection of some of the vouchers.

Q. Were you able from those records to make and establish a computation of the cost of those interconnection facilities?

A. Yes, with the assistance of an exhibit that was introduced by the defendant several days ago.

Mr. Royhl: Referring to what exhibit?

Mr. Benson: The witness indicated he wanted to refer to one of the exhibits.

The Witness: I am talking about the exhibit that had the tabulation, the one produced by Mr. Sickel after Mr. Buckmier testified he didn't know the source of 65,000 some odd dollars.

Q. You are referring to the exhibit where they had a total of $303,349.00?

A. This particular item referred to $60,000 for the Aberdeen station.

Q. It is the exhibit that had the total of those items of $303,000.00? A. Yes.

Q. When did you make your investigation or audit to ascertain the cost of these interconnection facilities?

A. I made my original effort in October and November, 1946, and I completed it since this exhibit was introduced.

Q. Were you able to complete it until they produced Exhibit 216 here? A. No.

Q. State whether or not you went to Huron for the purpose of examining the items which now appear in Exhibit 216? A. Yes.

Q. When was that?

A. In October and November, 1946.

Q. Did you inquire at that time of some one in the defendant's office for the figures which now appear in Exhibit 216? A. Yes.

Q. And particularly for the breakdown of the Aberdeen substation figures? A. Yes.

Q. What person?

A. Mr. Mauck. He was assigned to give me such information as they wanted to give me.

Q. The assistant secretary that was here on the stand a day or two ago? A. Same fellow.

Q. Were you able to get this information from him?

A. No.

Q. What did he tell you?

A. He gave me a schedule—When I say "he" I want to qualify it because at times he had an alternate, but he was usually in charge. He gave me a schedule prepared by Mr. Bayles which shows nothing but the total cost of the Aberdeen substation and allocated portion, and told me that was all they had.

Q. Told you that was all they had? A. That is right.

Q. Did you make a compilation from these various sources and make an estimate of the cost of these interconnection facilities? A. Yes, I did.

Q. Will you let me have that tabulation?

A. This is the summary.

Plaintiff's Exhibit 88, which was marked for identification, is as follows:

Plaintiff's Exhibit 88.

Comparison of Values Assigned to Interconnection Facilities

	By Elvig As of 1/1/36	By Defendant's Exhibit 216	By Sandstedt's Letter to F. P. C. Dated 2/24/42
Aberdeen substation	$ 43,038.77	$ 52,547.49	$ 60,479.48
Aberdeen-Barnard line	28,545.36	32,800.34	47,824.90
Aberdeen-Ipswich line	58,833.92	64,370.97	60,038.68
Gettysburg substation	15,500.43	24,851.86	25,249.44
Gettysburg-Highmore line	109,781.06 (2)	109,781.06	109,856.76
Totals	$255,699.54	$284,351.72	$303,449.26 (1)

Note (1) This amount reflects additions and retirements to December 31, 1941, even though it is used as the basis for amortization, interest and operating expense beginning January 1, 1936. In a previous letter to the Federal Power Commission, dated March 15, 1939, Mr. Sandstedt quotes a value of $324,989.78.

(2) The accounting on Work Orders 397 and 420 is so hopelessly confused that no one can now state accurately the proper cost. In this column Mr. Strike's figure of $109,781.06 (Defendant's Exhibit 216) has been used even though it includes the 33 KV circuit from Ree Heights to Highmore, which is not included in the contract. The figure also includes excessive overheads.

Q. From what did you make your summary, from a tabulation?

A. From four other schedules. The fifth item is covered by a foot note on the summary.

Plaintiff's Exhibit 88-A, which was marked for identification, is as follows:

Plaintiff's Exhibit 88-A
(Pages 577, 579, 581, & 583)
is shown on Card 11.

Q. Are these figures taken entirely from Exhibit 55, which is material produced by the defendant, and from Exhibit 216, which was produced by the defendant?

A. That is right.

Q. Is Plaintiff's Exhibit 88-A the tabulation, consisting of four other schedules, which is the basis of your summary, which summary is Exhibit 88? A. Yes, it is.

Mr. Fellows: We offer in evidence Plaintiff's Exhibits 88 and 88-A.

Q. Do Exhibits 88 and 88-A show all of the evidence of cost which entered into the interconnection facilities that you could find in the records you have testified about?

A. Yes, they do. Such facilities as provided by the defendant in this case.

Mr. Royhl: Defendant objected to Exhibits 88 and 88-A each separately, as being self serving, hearsay; no proper foundation laid; incompetent, irrelevant and immaterial for any purpose; there being no proof of capacity on the part of the witness who has prepared these, and he not having identified the record from which the claimed computations were made, and it appearing that the said computations are wholly the opinions and conclusions of the witness and not a tabulation from accounts, but wholly the opinion and conclusion of this person, who is not qualified to determine what, if anything, should be included within the classification shown by the exhibit, and the exhibits are argumentative, particularly the notes appended to Exhibit 88, as being wholly self serving, and the opinion and conclusion of the person making them, there being no foundation laid therefor.

The Court: This is an expert witness, and an expert witness' testimony is usually opinion and conclusion. He is qualified as an expert. Objection overruled.

Mr. Royhl: To the extent of engineering, or just an accounting expert?

The Court: He has qualified as an expert on going over these accounts. There isn't any question about that in my mind. Objection overruled.

Q. Does this tabulation and this summary include an item of the cost of the Gettysburg substation?

A. Yes, it does.

Q. In what amount?

Mr. Royhl: May we have the same general objection to all of this line of testimony?

The Court: Yes, the record may show you have the same objection and same ruling of the Court to all evidence of the same character.

A. This shows the ledger balance to be $23,782.62 as of the date the interconnection contract went into effect, January 1, 1936.

Q. Is that the Gettysburg substation which you testified the northern companies paid for?

A. The northern companies paid for a part of this substation.

A. This substation has two banks of transformers, and one of them, while inserted in this work order and this ledger sheet at a value, actually belonged to the plaintiff in this case.

Q. Why do you say it belongs to the plaintiff in this case?

A. From observation of the work order, language of the work order, which is part of Exhibit 55.

Q. Were there any other items which belonged to the plaintiff in this case which were included by the defendant in its records of the cost of these interconnection facilities?

A. There are no other items that belong to the plaintiff in these work orders.

Q. When I refer to the plaintiff you know I mean its predecessor companies? A. Yes, I understand that.

Q. What did you determine from the books and records and by your tabulation and summary, was the cost of the interconnection facilities?

A. You are speaking of the group of them now?

Q. Yes.

A. I determined the value, $255,699.54, as of January 1, 1936, as compared to the contract figures of $303.449.26.

Q. Is Exhibit 82-6, consisting of four pages, letters which you found in the correspondence file or section of Exhibit 82? A. Yes, it is.

Plaintiff's Exhibit 82-6 was received in evidence, and reads as follows:

Plaintiff's Exhibit 82-6.

Middle West Utilities Company

Chicago

Date 1-11-35.

For/Company Business Only

Subject Management: UPU Properties

Location Northwestern Public Service Company

to C. J. Strike

From Geo. A. Mills

cc FEK

This is to thank you for your letter of the 10th sending detailed analysis of expenses allocated to the UPU companies. On the strength of our telephone conversation of Wednesday, I prepared for Mr. Green a memorandum, copy of which is attached. While the totals stated in the memorandum do not quite correspond with your detailed exhibit, I believe they are close enough for present discussion.

GEO. A. MILLS

GAM:KG

Services Rendered U. P. U. Group in Dakotas

Northwestern Public Service Company

Memorandum

North Dakota Power & Light Company, Northern Power & Light Company and the Knife River Coal Mining Company last year paid the Northwestern Public Service Company for general expense $44,400. This is divided as follows: Payroll $33,600, and other miscellaneous expenses $10,800. If these properties are separated from the Huron management, certain traveling expenses and personnel would be eliminated. It is Mr. Strike's estimate that the saving in payroll would be about $11,400 and other expenses would be cut $5,400, or a total saving of $16,800 per year; that is, the general expenses of the Northwestern Public Service Company would increase $27,600 if the management of the UPU Dakota properties were taken away.

Also please note that the UPU properties would have available $44,400 to provide an executive staff, including their traveling expenses and additional office people and miscellaneous supplies to make up a general office.

There is one important inter-company transaction which should be considered in the above. At the present time the Northwestern Public Service Company is purchasing power from the Northern Power & Light Company, who in turn is purchasing power from the North Dakota Power and Light Company. The Beulah plant of the North Dakota Power & Light Company is located at the mouth of the Knife River Coal Mining Company's mine. With this arrangement a profit is made by each company concerned, however, at the delivery point near Aberdeen, S. D., the Northwestern Public Service Company is paying a price equal to its own fuel cost, therefore, in buying power from the UPU Company it is making possible a profit to the UPU Company without harm to itself.

On the other hand the Northwestern Public Service Company has invested in substation equipment and transmission line to make this interconnection $327,000.

The UPU companies do not pay fixed charges or any other charges on this investment. This transmission line and substation provides a two-way service for the UPU properties and is of no particular value to the service of the Northwestern Public Service Company.

If there should be a change in management a new contract should be arranged whereby the UPU properties would help carry this $327,000 investment on account of the profits they are making on energy sold and the service they receive by having standby power on the south end of their system.

During the year 1934, 2,500,000 kilowatt-hours were purchased by the Northwestern Public Service Company at a cost of $12,627, however, in 1933, the Northwestern Public Service Company purchased five million kilowatt-hours at a cost of about $25,000.

General Office Payroll and Expenses
Allocation

January 10, 5

Geo. A. Mills.

In reply to your telephone call I am attaching hereto breakdown of expenses which are allocated between the four companies and showing the basis of allocation. This basis is revised annually and is on a basis of gross revenues, excluding inter-company transactions.

There are many expenses which are not allocated but which are absorbed directly by Northwestern Public Service Company. The expenses as detailed in the attached statement are what we believe, properly chargeable to all companies. There are no direct charges made to the U. P. U. Companies.

You will note that the allocation includes all General Office Supervision and Operation including the actual billing for all of the customers as we have centralized billing in the General Office. We have very carefully reviewed these items on a monthly basis and are convinced that each

are defensible as being chargeable to the various companies, and in the aggregate, the expenses to the U. P. U. groups is a very nominal charge.

While the attached is for the month of November, it is my opinion that for the year these charges will average approximately $3600.00 per month. As I advised you yesterday there is no charge made for the interconnection between Northwestern and Northern Power and Light Company, Northwestern having an investment of approximately one-third of a million dollars of transmission lines and substations.

Particularly, at the present time, Beulah has no surplus power except on the after midnight or off-peak periods and consequently, Northwestern gets no benefit from the U. P. U. system. If you will check the map on the lines owned by Northwestern you will note the 33,000 line from Highmore to Gettysburg; the 33,000 line from Aberdeen to Ipswich; and the 33,000 volt line from Aberdeen to Barnard including the stepdown substation. Likewise, that portion of the [aberdeen] substation which is chargeable to the interconnection.

Yours very truly,

CJS-B

C. C. to Mr. Kruesi

Encl.

By Mr. Fellows:

Q. Did you find anything in the records, which are Exhibit 82, which showed whether the energy was metered at Aberdeen? A. Yes.

Q. What document in Exhibit 82 disclosed that?

A. Each month a voucher covering interchange of power between Northwestern Public Service Co., and Northern Power & Light Co., and later Dakota Public Service Co. One voucher each month.

Q. Examine Exhibits 82-7 and 82-8 and state whether or

not they are respectively those vouchers for 1939 and 1941?

A. These are the vouchers for the month of January in each of the year, 1939 and 1941, covering interchange of power. The 1939 voucher would be Northern Power & Light. The 1941 would be Dakota Public Service Co.

Q. Do those vouchers show the allowance of line loss during the period which each of them cover?

A. One of them does, yes.

Q. For what year? A. For January, 1939.

Q. Is there any other line loss recognized for any other period of time during that period?

A. It continues for a period of 24 consecutive months, including December, 1940.

Q. Thereafter what does the record disclose as to line loss?

A. The second voucher which I spoke of, which is identified as Exhibit 82-7, makes no allowance for line loss, and carries notation giving the reason for discontinuing it.

Plaintiff's Exhibits 82-7 and 82-8 were received in evidence.

Q. Does the voucher, Exhibit 82-8 contain a statement of the reason for discontinuance of an allowance for line loss? A. No.

Q. Does Exhibit 82-7 contain the reason? A. Yes it does.

Q. Was that statement on the voucher when it came into your hands? A. Yes, it was.

Q. What is the statement?

A. "Note—New interpretation has been placed on interchange contract at January 1st, 1941, by Mr. Sanborn and Mr. Sandstedt. This interpretation of contract implies that all KWH interchange would be transferred as of FOB metering points and all KWH losses have eliminated from billings starting with January 1, 1941." It would appear the word "been" has been inadvertently left out. It is signed with some initials I can't decipher, and dated February 14, 1941.

Q. Did you examine the records of the defendant from Exhibit 55 to ascertain if possible the amount charged

to operation and maintenance and taxes for the interconnection facilities? A. Yes, I did.

Q. In order to determine the fair per cent of charge on the original investment? A. Yes.

Q. What records do you find which gives you information on those items?

A. The operating reports, financial statements and operating reports, published in 1936, and Federal Power Commission reports from that date up to 1945. And the tax records produced by Mr. Buckmier.

Q. You mean their reports to the Federal Power Commission? A. Those on FPC No. 1.

Q. And on their tax reports? A. Property tax records.

Q. Are they available in Exhibit 55, those records which you obtained the figures from? A. Yes, they are all here.

Q. Did you make a computation and summarize such amount in dollars and cents?

A. No. I reduced my figures to per centages.

Q. What per centage did you reduce your figures to?

A. Slightly under 1% on taxes. Around 1%, or little over on operation and maintenance. A total of 2-1/4% at the outside. It would vary somewhat from year to year.

Q. Did you make figures for your own use?

A. I made figures for my own use, yes.

Q. Were these figures based on a cost of $303,349.26?

A. When I stated my per centages I used them in connection with that figure.

Q. Referring again to the expenditures by plaintiff, did you find an item in the records whereby the wiring or voltage from Frederick to state line was increased?

A. I think I testified to that.

Q. Do you know what year that was in?

A. I don't recall offhand.

Q. From what record did you find that item?

A. I don't believe I can state right now.

Q. Haven't you the same record there?

A. I don't believe it was done under construction work order.

Q. Do you know what the increased voltage was, from the records? A. Yes.

Q. What was it?

By Mr. Royhl:

Q. Are you testifying to a figure that appears in some records now? A. No, sir.

Mr. Royhl: We object to this as incompetent, irrelevant and immaterial; no proper foundation; wholly opinion and conclusion of the witness; speculative, indefinite and uncertain.

The Court: He has testified that he knows. There isn't anything in your examination of him to indicate that he doesn't know. If he knows he can answer. Objection overruled.

A. The voltage was increased from 22,000 to 38,000.
Q. Do you know whether that was in December, 1940?
A. That is approximately the right date.
Q. State whether or not you also found an increase in voltage from state line to Ellendale?
A. Yes, that was a part of the same transaction.
Q. Were you able to find whether or not there was an increase in voltage across the state line to Ellendale?

Mr. Royhl: Same objection.

The Court: Answer yes or no.

A. Yes.
Q. What was the increase as shown by the record?

Mr. Royhl: Same objection heretofore made to this line of questioning.

The Court: The witness has testified he is able to state from the record. The objection is overruled.

A. Increased from 22,000 volts to 38,000 volts.
Q. Was that also in December, 1940? A. Yes.
Q. Upon an examination and audit of these records were you able to find figures from which you made a schedule showing power received from the defendant corporation,

and its average cost per Kilowatt hour by years, from 1930 to October, 1945, inclusive?

The Court: Answer yes or no.

A. Yes.

Q. Will you find that schedule? Was the schedule you just mentioned compiled or tabulated from the records which are included within Exhibit 82? A. Yes.

Plaintiff's Exhibit 82-9 was received in evidence and reads as follows:

Plaintiff's Exhibit 82-9.

Dakota Public Service Company and Predecessor

Schedule Showing Total and Average Cost of Gross Energy Received from Northwestern Public Service Co.

Year	Charges: Rental	Charges: Reserve Capacity	Charges: Energy (Gross)	Charges: Total	KWH Received	Average Cost per KWH (in Mills)
1930	.....	.....	$ 2,509.11	$ 2,509.11	231,449.	10.84
1931	.....	.....	8,094.45	8,094.45	1,051,060.	7.70
1932	.....	.....	11,384.21	11,384.21	1,724,880.	6.60
1933	.....	.....	7,874.20	7,874.20	1,574,840.	5.00
1934	.....	.....	9,465.60	9,465.60	1,893,120.	5.00
1935	.....	.....	10,904.80	10,904.80	2,180,960.	5.00
1936	$20,000.00	.....	17,958.30	37,958.30	3,591,660.	10.57
1937	20,000.00	.....	12,951.30	32,951.30	2,590,260.	12.72
1938	20,000.00	$22,440.00	10,712.70	53,152.70	2,142,540.	24.81
1939	20,000.00	18,136.80	12,109.40	50,246.20	2,421,880.	20.67
1940	20,000.00	12,685.20	9,911.70	42,596.90	1,982,340.	21.49
1941	20,000.00	4,276.80	6,903.42	31,180.22	1,380,684.	22.58
1942	20,000.00	17,199.60	5,032.30	42,231.90	1,006,460.	41.96
1943	20,000.00	8,514.00	6,599.70	35,113.70	1,319,940.	26.60
1944	20,000.00	9,992.40	7,144.50	37,136.90	1,428,900.	25.99
1945	20,000.00	22,994.40	9,685.60	52,680.00	1,937,120.	27.20

Schedule Showing Sales to Northwestern Public Service Co.

	Energy Sales	Total Sales	KWH Sold	Average Price (in Mills)
1930	$ 9,554.30	$ 9,554.30	1,227,395.	7.5
1931	26,296.06	26,296.06	3,506,141.	7.5
1932	29,640.60	29,640.60	4,491,000.	6.6

All energy sales subsequent to 1932 were at 5 mills per KWH.

Q. You took your figures which are in Exhibit 82-9 from the records which go to make up Exhibit 82? A. Yes.

Q. And are the figures which appear on 82-9 accurate as shown on the records which make up Exhibit 82?

A. Yes, they are.

Mr. Fellows: Offer in evidence Exhibit 82-9.

Q. Does Exhibit 82-9 also show the power and the average cost of it which was sold by us to the defendant?

A. Yes, for three years, while the price was very low.

Q. Are those figures also taken from the records, Exhibit 82? A. Yes, they are.

Mr. Fellows: We offer in evidence Exhibit 82-9.

Mr. Royhl: Objected to as incompetent, irrelevant and immaterial; argumentative; not an audit or statement of what is shown by the books; no proper foundation laid; the witness not qualified.

The Court: Overruled.

Plaintiff's Exhibit 82-10 was received in evidence and reads as follows:

Schedule showing sou
Dakota Public Servic
January

Year	NET GENERATION					
	Beulah Steam Plant	Bismarck Steam Plant	Mandan Steam Plant	Dickinson Steam Plant	Dickinson Diesel Plant	Mott Diesel Plant
1929	14,305,196	3,141,892	24,681	140,144	-	655
1930	18,875,940	3,304,324	117,970	124,667	-	348
1931	24,043,300	2,949,678	19,460	86,298	125,546	3,865
1932	24,243,316	3,025,400	58,049	275,040	554,438	10,641
1933	26,473,435	3,020,700	85,113	2,800	214,719	3,639
1934	26,090,200	3,763,230	33,625	-	644,999	10,108
1935	29,971,120	4,199,540	111,168	-	473,659	16,542
1936	29,107,638	4,331,870	139,852	-	1,131,306	53,837
1937	35,202,352	3,768,370	26,774	103,800	454,105	37,290
1938	37,412,751	3,773,310	43,303	1,000	287,285	19,837
1939	39,722,389	5,348,070	48,380	15,700	434,000	13,036
1940	39,711,328	8,675,704	54,774	7,740	508,528	9,997
1941	38,569,145	18,753,243	51,423	10,540	204,267	23,277
1942	38,314,752	21,072,877	54,776	4,700	283,365	6,427
1943	41,246,800	18,485,060	64,628	5,530	133,566	3,300
1944	39,789,600	20,113,068	65,944	12,900	468,236	3,996
1945	44,668,440	20,944,808	56,694	25,540	719,017	20,785
to Oct.19	33,925,220	16,598,000	56,014	5,000	434,370	6,217

Year	Purchases from others	Total 'Dakota' Group	INTERCHANGE			Balance
			To Northwestern	From Northwestern	Net to Northwestern	
1929	6,437	21,550,665	-	-	-	21,550,665
1930	31,331	25,736,843	1,227,375	231,449	995,926	24,740,917
1931	-	29,577,925	2,569,149	84,600	2,484,549	27,093,366
1932	-	29,633,559	4,491,000	1,724,880	2,766,120	26,867,539
1933	-	30,856,573	5,781,400	1,574,840	4,206,560	26,650,013
1934	-	32,680,474	4,826,100	1,893,120	2,932,980	29,747,494
1935	-	38,497,367	5,854,200	2,180,960	3,673,240	34,824,127
1936	-	39,456,447	5,091,200	3,591,660	1,499,540	37,956,907
1937	-	44,174,749	6,239,169	2,590,260	3,648,909	40,525,840
1938	-	45,481,465	6,251,670	2,142,540	4,109,130	41,372,335
1939	-	48,477,898	6,688,515	2,433,920	4,254,595	44,223,303
1940	-	52,192,597	7,044,662	1,992,340	5,052,322	47,140,275
1941	-	60,893,511	11,314,400	1,380,684	9,933,716	50,959,795
1942	-	63,082,150	12,102,000	1,006,460	11,095,540	51,986,610
1943	-	63,355,560	11,621,100	1,319,940	10,301,160	53,054,700
1944	-	65,193,653	10,883,300	1,428,900	9,454,400	55,739,253
1945 to Oct. 19		54,915,021	8,847,500	1,265,300	7,582,200	47,332,821
1945		69,995,271	14,695,800	1,937,120	12,758,680	64,736,591

edule showing source of electric energy in Kilowatt hours fr-
kota Public Service Company and its predecessors from
January 1, 1929 to October 19, 1945

GENERATION

Mott Diesel Plant	Mobridge Steam Plant	Ellendale Steam Plant	Lemmon Diesel Plant	Gettysburg Diesel Plant	All Other Diesel Plants	Balance
655	3,242,086	302,970	46,880	2,641	[illegible]	21,550,665
348	2,837,077	275,222	24,821	1,331	144,508	24,740,917
3,865	2,258,200	47,186	6,303	75	38,154	27,093,366
10,641	1,525,600	23,272	43,925	2,497	[illegible]	26,867,539
3,639	1,215,400	21,908	6,940	2,227	[illegible]	26,650,013
10,108	2,222,700	29,223	8,812	3,273	-	29,747,494
16,542	3,727,900	31,065	24,254	4,249		34,824,127
53,837	4,674,200	35,225	45,486	7,483		37,956,907
37,290	4,637,300	32,020	17,768	12,558		40,525,840
19,837	4,046,900	37,865	19,556	1,994	-	41,372,335
13,036	2,997,600	47,793	41,344	1,932	-	44,223,303
9,997	3,347,900	42,927	27,869	1,232	-	47,130,275
23,277	3,407,700	42,215	13,411	5,566	-	50,959,795
6,427	3,446,700	33,085	35,491	6,299	-	51,986,610
3,300	3,584,200	42,990	3,196	1,826	-	53,054,700
3,996	4,905,400	45,080	9,237	2,240		55,739,253
20,755	5,120,900	47,455	29,921	7,660		47,332,822
6,217	4,024,700	40,250	23,387	4,395	-	64,784,842

Q. Does it correctly and accurately reflect the entries in various records in Exhibit 82, from which it was compiled and taken? A. It does.

Q. What records were used in the preparation of this schedule? A. The records identified as operating reports.

Q. Will you take Exhibit 82-10 and explain the various figures that appear in the different columns?

A. The first column shows the years for which the figures are submitted. The next eleven columns show the net kilowatt hour generation in each of the power plants of the system, the combined system, Northern, North Dakota, and later Dakota Public Service Co. Where there are red figures it indicated the output of the plant was negative. That is, where the consumption of a station was more than the amount generated. The ink figures opposite 1945, and other figures beneath them, are the figures for the year Montana Dakota acquired. The figures in the lower tabulation are reversed because these figures were inserted after the tabulation was prepared and there was no space available. In the lower section the first column after the year shows purchased power from outside sources, not including Northwestern Public Service Co. I should qualify that. I am not sure but it might, but the amount is trivial. It might include Northwestern Public Service Co. And the title "Dakota Group" indicates the same. The next three groups are covered by the title "Interchange". The first shows the energy delivered to Northwestern Public Service Co. The second from Northwestern Public Service Co., and the third, the net amount delivered to Northwestern Public Service Co. The last column is the balance after deliveries to Northwestern Public Service Co. and this last column would be energy for [Dakots] company's own use, including its own line loss and line loss on energy delivered to Northwestern Public Service Co.

Q. Did you prepare from your examination and audit of the records which go to make up Exhibit 82, a [shcedule] showing the production costs per kilowatt hour of net generation of the principal plants or of the total plants for Dakota Public Service Co. and its predecessor from 1930 to 1945? A. I did.

Q. From what records did you prepare that schedule?

A. From the operating reports.

Plaintiff's Exhibit 82-11 was received in evidence. It reads as follows:

Plaintiff's Exhibit 82-11.

Schedule Showing Production Cost per KWH of Net Generation of Principal Plants and Total Plants for Dakota Public Service Company and Its Predecessor from 1930 to 1945

Production Cost (In Mills)

Year	Beulah	Bismarck	All Power Plants
1930	4.80	16.65	10.05
1931	3.82	16.07	7.93
1932	3.75	(not available)	7.40
1933	3.84	15.29	7.04
1934	4.41	13.67	7.32
1935	4.07	11.62	6.59
1936	4.45	13.02	7.14
1937	3.65	13.60	5.96
1938	3.72	12.63	5.85
1939	3.53	8.90	5.51
1940	3.21	7.49	5.23
1941	3.45	5.14	5.14
1942	3.83	5.21	5.43
1943	3.75	5.93	5.62
1944	3.97	6.10	5.94
1945 (to Oct. 19)	3.97	6.10	5.88

Q. Is Exhibit 82-11 the schedule you have just testified about? A. Yes, it is.

Q. Does it correctly show the entries as they appear in the record from which it was made up?

A. Yes, except the last column is a computation, I believe.

Q. Was the production cost which you took from the books and placed on the Schedule, 82-11, figured in mills?

A. Yes.

Q. Did you prepare from the records which go to make up Exhibit 82 a schedule showing energy received by Dakota Public Service Co. and its predecessor from Northwestern Public Service Co. from January 1, 1936 to October 19, 1945? A. I did.

Plaintiff's Exhibit 82-12 was received in evidence. It reads as follows:

KWH

Schedule showing energy received by Dakota Public Service Company and its predecessor, from Northwestern Public Service Company from January 1, 1936 to October 19, 1945

	(1) Delivered to Northwestern at Aberdeen	(2) Received from Northwestern At Aberdeen	(3) Total Interchange at Aberdeen	(a) Percent received to total	(b) Delivered to Northwestern at Barnard and Gridley	(c) Portion of energy for Barnard and Gridley supplied From Aberdeen	(d) Net energy received from Northwestern at Aberdeen	(e) Energy received from Northwestern at Gettysburg
1936	4,000,300	2,551,000	6,554,100	38.93	841,010	327,417	2,224,383	792,000
1937	5,395,200	1,536,300	6,932,500	22.74	630,909	143,469	1,432,831	762,900
1938	4,981,200	1,650,000	6,631,100	27.08	754,130	204,218	1,645,782	27,400
1939	5,485,200	1,975,300	7,460,300	26.47	817,780	216,451	1,758,649	156,800
1940	5,744,300	1,541,400	7,285,500	21.16	835,160	180,952	1,360,448	100,200
1941	5,696,700	267,300	5,963,800	2.48	834,125	20,687	226,413	765,120
1942	6,708,400	393,500	7,358,300	5.08	797,040	64,401	529,499	70,200
1943	5,886,400	898,200	6,784,600	13.48	820,060	109,888	788,312	53,100
1944	4,873,300	1,022,300	5,894,900	17.33	970,700	168,222	853,578	28,200
1945 (to Oct. 19)	4,339,980	7167,300	5,327,200	14.40	939,800	135,331	631,969	182,100

(a) Column 2 divided by column 3.

(b) Energy metered to Northwestern at Gridley and Barnard less energy metered to Dakota Public Service Company and predecessor at Barnard.

(c) Computed energy supplied to Barnard and Gridley by Northwestern. (a x b)

(d) Computed energy supplied to Dakota Public Service Company and predecessor by Northwestern (2-c)

(e) As metered.

Plaintiff's Exhibit 82-12.

Filed Feb 19. 1948
Roy D Marker
Clerk

P# 82-12

Q. Is Exhibit 82-12 the schedule you have just referred to? A. Yes, it is.

Q. From what records is that schedule made up?

A. From the operating reports.

Q. In Exhibit 82? A. Yes.

Q. Does that correctly show the entries as they appear in Exhibit 82?

A. Part of it which is an abstract, that is accurate, and part of it is computation.

Q. Which part of it is computation?

A. Beginning with "A".

Q. A, B, C, D and E.? A. A, B, C, and D.

Q. A, B, C and D are computation, and the columns headed 1, 2 and 3, are figures taken from the books?

A. Figures 1 and 2 are from the books. #3 is the total of the first two.

Q. 1 and 2 are the figures taken from the book and totalled under Column 3? A. That is right.

Q. Column A is a computation of what?

A. Computation of the figures under the respective years in Column 2, divided by the figure in the same year in Column 3.

Q. What does that purport to represent?

A. It shows the ratio of energy received from Northwestern Public Service Co., at Aberdeen and to the total movement both ways.

Q. What does Column B purport to show?

A. That shows the amount of energy delivered to Northwestern at Barnard, less the amount which they in turn delivered to Dakota at Barnard.

Q. That is the net energy? A. That is right.

Q. And Column C?

A. Column C is a computation to determine what part of the energy in the preceding column came from Dakota and what part of it came from Northwestern.

Q. How could you ascertain that, or from what records could you ascertain that figure?

A. That is arrived at by applying the per centage which appears in column A to the figure in column B.

Q. What does column D show?

A. Column D is addition of the figures in Column 2 and column C.

Q. What net energy does that exhibit show?

A. This does not show what portion of the energy metered to Dakota at Aberdeen actually went to Dakota. It has to be on a computation basis because the record was not kept and the meter was not kept at the plant to show true interchange.

Q. That is the only method of computing that, is it, in the absence of metering?

A. In the absence of proper meter allocation and records one has to resort to some computation. To my mind this is the fairest yardstick to apply.

Q. What does column E purport to show?

A. That is the energy delivered to Dakota and its predecessor at Gettysburg by Northwestern Public Service Co., for the respective years.

Plaintiff's Exhibit 82-13 was received in evidence. It reads as follows:

Bismarck, Bismarck and Mobridge Plant Statistics

Year	Net Kwh Generated	Net Fuel Cost	Average Fuel cost per Kwh (Mills)	Total Cost of Power Generated	Average Cost per Kwh (Mills)
1930	23,017,941	$116,462.26	5.06	$204,693.38	8.89
1931	29,251,178	113,633.98	3.88	188,630.88	6.45
1932	30,720,555	116,002.88	3.81	181,582.13	5.91
1933	42,076,180	120,339.86	2.73	201,774.23	4.79
1934	37,894,960	134,165.06	3.54	216,960.04	5.72
1935	36,111,704	137,849.41	3.61	235,183.28	6.17
1936	45,602,022	122,668.95	2.69	224,264.78	5.18
1937	46,066,099	124,081.66	2.98	229,413.88	4.77
1938	42,744,952	131,979.76	2.98	231,347.73	4.99
1939	50,788,088	157,160.57	2.99	278,160.61	4.51
1940	62,831,729	180,185.51	2.87	302,842.96	4.82
1941	63,116,060	188,831.83	2.98	315,772.96	4.99
1942	64,806,068	202,276.82	3.12	342,252.28	5.28
1943	54,987,920	178,766.89	3.24	266,776.78	5.29
1944	47,726,925	144,343.30	3.31	263,539.56	5.52

Columns are after deducting steam heat credits.

Filed Feb. 17, 1948.
Doy D. Thurber
Deputy
Dakota

Q. Is Exhibit 82-13 a schedule prepared by you?
A. This schedule was prepared under my direction.
Q. From what records? A. From the operating reports.
Q. In what? A. Exhibit 82.
Q. Did you check it with the entries in Exhibit 82?
A. Yes, I have.
Q. Does it correctly reflect the entries in Exhibit 82?
A. Yes, it does.
Q. What does it purport to show?
A. This schedule is a summary of the statistics for [Buelah], Bismarck and Mobridge plants by years from 1930 to 1945, and it shows for the three plants combined the net kilowatt hours generated, the total cost of generation, the average cost per kilowatt hour generated in mills, and the net fuel cost for generation of the three plants combined, and the average fuel cost per kilowatt hour, the cost in each case per kilowatt hour, in mills.

Plaintiff's Exhibit 82-14 was received in evidence. It consists of engineering survey by Lucas & Luick, engineers, Chicago, Illinois, of the combined properties of Hughes Electric Company, Bismarck, North Dakota, and Northern Power and Light Company, Mobridge, South Dakota, dated March 1928, comprising 149 pages, inclusive of diagrams, blue prints, graphs and similar exhibits, and a two-page index, title page and a two-page transmittal letter dated April 14, 1928 addressed to United Public Service Company. Portions thereof are as follows:

"Summary of Conclusions and Recommendations.

Pages 1-4.

"The purpose of the investigation reported herewith was to determine the economic requirements and probable economic results attending the consolidation of the Hughes Electric Company and the Northern Power and Light Company properties."

The Summary further states:

"The general results of the study may be summarized as follows:

"(1) A pronounced economy will result from producing the maximum amount of energy at the Beulah Station.

"(2) A certain amount of energy will be produced at other steam plants in order to furnish exhaust steam for the heating systems and also at times of peak demand. These plants being under operation can relieve the system at peak periods so as to obtain good voltage regulation, thus obviating an otherwise essential investment in transmission copper.

"(3) Additional transmission capacity is required between Beulah and Bismarck, and the new line between these stations should take a route different than the present line, preferably such a route as will approach the Ottertail Power Company system at some point, looking to a future interconnection.

"(4) The oil engine plants should be shut down, but held as standby reserve in case of break-down emergency.

"(5) The first and shortest interconnecting line between the Hughes Electric Company and the Northern Power & Light Company systems can be run from Bismarck to Driscoll.

"(6) A transmission line connection between Elgin and Thunderhawk will be of economic value in permitting closing down the Lemmon oil engine plant.

"(7) Eventually a tie-in between McIntosh and Mobridge via McLaughlin will be required to enable the shutting down of the latter station and to permit a reduction in Mobridge station operation in favor of energy from Beulah. Tie lines between Wetonka and Ipswich, and between Mobridge and Herreid will result in increased transmission capacity and improved voltage regulation.

"(8) A 3500 K. W., 14-stage turbine unit seems to be the most economical to install at Beulah.

"(9) The prospective growth of business and resulting revenue appears to be such as to support the construction program outlined.

"(10) An analysis of Knife River Coal Mining Company costs indicated that the excess cost of mining their coal would warrant its use in all of the steam stations, with a resulting economic gain.

"(11) Due to the relatively low saturation of the territory, it may be said in general that it becomes necessary to obtain the maximum revenue possible. This requires that the territory be well covered with lines, but such lines must be built at a minimum cost, consistent with reasonable reliability and carrying capacity. Furthermore, in order to raise the sales to a maximum, the measures that suggest themselves are a survey of the territory to ascertain prospective sales, a vigorous new business policy, and a study of rate structures to see that they are such as to result in maximum revenue.

"Due to the newness of the Beulah plant, there was but little background offered for compiling operating results. However, an estimate of future costs was built up based on known results of similar equipment, and it is believed that the figures arrived at are conservative enough to be safely used in the study. Fuel has been taken at $.95 per ton at the tipple, this representing the excess cost of mining coal for the electric stations. An analysis of mining costs was made which shows an excess cost figure somewhat below this, but in order to be conservative, a few cents were added for contingencies, and the amount $.95 arrived at. It appears that with $.95 lignite the production cost at Beulah should approximate $.004 per KWH, generated. The corresponding efficiency would be 26,000 to 28,000 BTU. per KWH. output which should be reasonably attainable in a station of the type contemplated. In making comparisons between station generating costs, excess cost figures were used. The excess cost of making 6,000,000 KWH. at Beulah—that is, increasing output from 8,000,000 to 14,000,000 KWH.—figures $14,300, or $.0024 per KWH. The excess cost of making 6,000,000 KWH. at Bismarck—that is, increasing the output from the 2,000,000 KWH. required to produce heating steam to 8,000,000 KWH.—figures $31,400, or $.0053 per KWH. The comparison with the other stations is, of course, still more favor-

able to Beulah operation. The conclusion is that even with considerable line loss, it would be most economical to generate the maximum quantity of energy at Beulah.

In the chapter "Forecast of Revenues" there is presented a detailed program of proposed capital expenditures for the ensuing four years. During the first year the expenditures in round numbers consist of $250,000 for plant extension, $430,000 for transmission additions, and $150,000 for distribution and other lesser improvements. During subsequent years the aggregate amount per year will become less. These expenditures will be essential to insure continuity of service and to care for the additional load which it is anticipated will accrue to the system in the near future.

The economical justification for the outlined improvements is to be found in the saving resulting from producing the greatest amount of energy in the plants of lowest operating costs, the closing down of high cost oil engine plants, the acquisition of new consumers along the lines, and the revenue from the natural growth of business.

Pages 5 and 6:

An inspection of the foregoing table and of the tabulation on a subsequent page outlining the construction program, will show that a plant at any location other than near Beulah would not be as economical a project as the development of the Beulah station. A plant at any other location would have to save its own cost in transmission lines, plus the coal freight on its fuel. The latter could hardly be accomplished by a superior efficiency, and consequently such freight cost would have to be compensated also by transmission line reduction. It can be seen that this would be impractical.

Pages 18 and 19:

Capacities, Conditions and Requirements.

The Beulah station as at present constituted contains one 750 H. P. boiler and one 2500 K. W. 80% power factor

machine, with a duplicate boiler installation on order and an additional generating unit contemplated.

The steaming capacity of the Beulah boiler room, after completion of the installation of the second 750 H. P. boiler, on a basis of 200% rating is 88,400 lb., on a rating of 225% is 99,500 lb. and on 250% is 110,000 lb. Assuming that these boilers can be carried at 225% of rating for periods of two or three hours and for shorter periods at 250% of rating, the total generating capacity becomes 6,350 kilowatts and 7,050 kilowatts respectively. On this basis the limitation with an additional 2500 kilowatt unit is the generating capacity, which, under high load factor, would approximate 6300 kilowatts. This capacity could not be carried continuously for any length of time, inasmuch as operating troubles could be expected in one of the boilers which would necessitate taking it out of service, in which event the capacity becomes 3,150 and 3,500 kilowatts respectively. From the standpoint of reliable operation, it will be necessary, within the next year, to install one additional 750 H. P. boiler so that the full generating capacity of the station can be relied upon constantly. With this third boiler installed, peak load operation may be contemplated from the standpoint of all boilers in operation which would produce a total steam capacity of 131,500 lb. at 200% of rating, equivalent to approximately 8,500 kilowatts of generating capacity. If the size of the second unit is increased to 3,500 kilowatts the maximum demand which can be placed upon the station under the good power factor conditions which should obtain, is slightly in excess of 7,700 kilowatts, requiring the operating of three boilers at 175% of rating and which undoubtedly is the rate of maximum efficiency for these boilers. In addition thereto, the 3,500 kilowatt unit will be able to handle peak loads of approximately 4,400 kilowatts, producing a reserve capacity in this unit when in operation, sufficient to carry the normal daily maximum during the next two years. It also places the station in a position so that this proposed unit and the existing unit can be offset by a future unit of either 3,500 kilowatts or 6,000 kilowatts, depending on which appears to be economic at that time.

Pages 29 and 30:

Transmission Requirements.

Having determined tentatively the probable outputs and loads to be demanded from the plants, the next part of the study was devoted to determining the transmission line construction necessary to convey the loads to be added.

The combined system will contain 13.2 K. V. lines, 22 K. V., delta-connected lines of single-arm, flat construction, and 40 K.-V., Y-connected lines of triangular construction. There are also a number of lower voltage branches. The last named and also the 13.2 K. V. lines need not be considered in this part of the discussion, in which it is expected to work out the main lines only. Several combinations of tie lines were considered speculatively, but the ones appearing worthy of further study reduced to two layouts which are illustrated diagrammatically. In any event, the following factors appear paramount:

1. The 22 K. V. lines should be remodeled to 40 K. V. Y-connection. The main lines should be not less than #1 to #00 conductor. Since 3-strand #6 equivalent to about #1.3, has been used extensively in the Hughes Electric Company's system, this size has been assumed in most of the calculations.

2. Not less than two parallel lines, preferably on independent routes, inter-connecting sections of the system, are essential to insurance of continuity of service. Necessary switching stations will be required at certain junction points.

3. Economies will be introduced thru the shutting down of isolated plants, and some revenue obtained, thru securing new consumers, but the principal value of the new lines is to be obtained thru transmitting power from Beulah where it can be produced at a low fuel cost.

4. Because of the relative locations of plants and loads, voltage drop becomes an important factor. During the peak demand periods the plants which are steamed up for supplying heating business will be required to take over

considerable portions of the demand in lieu of building lines heavy enough to handle such peak demands which occur but rarely, and are of short duration.

5. In order to obviate the necessity of changing the entire 22 K. V. portion to 40 K. V. at one time, which would be difficult and expensive, it has been planned to use auto transformers to transfer from one to the other until the change is completed.

The combined system mileage of lines is about as shown below:

	Present	To Be Built or Acquired Plan 1	Plan 2
Branches less than 13.2 K. V.....	55		12
13.2 K. V. branches	137	36	36
22.0 K. V. delta lines	485		
40.0 K. V.-Y lines	143	340	358

Of the 22 K. V. lines, about 190 miles are part of the main lines and should eventually be changed to 40 K. V.-Y connection and the copper increased to about #1. The branch lines can be changed in construction and reinsulated and the copper left as it is, mainly 3-strand #8. In general, it is planned that this work will be distributed over several years.

Pages 74 and 75:

Construction Estimates.

An estimate was prepared covering the cost of installing a new generating unit at Beulah with boiler and accessory equipment. Calculations were made assuming the installation of a 2500 KW. set, the same as the present one, also a 3500 KW. unit of similar type, and also a 3500 KW. unit, 14-stage construction. The boiler room additions are to be nearly a duplicate of the present. An itemization of the principal apparatus is presented to indicate what is included, and details are recited subsequently. It would appear that the spray pond addition could be deferred, and that less than a proportionate addition will be necessary. It also appears that the 14-stage unit will be economically of greater value than the 8-stage machine.

Beulah Plant Extension Estimate Covering 8-Stage, 2500 KW. Unit, 8-Stage, 3500 KW. Unit, 14-Stage, 3500 KW. Unit, Boiler Plant Equipment and Accessories

8-stage 2500 KW. unit with air cooler	$ 45,400.
Exciter and wiring	2,200.
Erection and freight, turbine and condenser	2,500.
Condenser, pumps and line to spray pond	19,500.
Panel and wiring	2,500.
Foundations, including building foundations	5,000.
Building extension	4,300.
750 HP. boiler and superheater, including superintendence	20,300.
Boiler erection and piping	5,500.
Stoker, furnace, air preheater, fans, steelwork, boiler accessories, (contract)	61,000.
Extra for larger feed heater	2,400.
Extra for concrete or account ash tunnel	4,000.
Fan motors, 40 H. P. and 75 H. P.	2,000.
	176,600.
Plus 20%	211,900.
8-stage, 3500 KW. unit with air cooler	$ 54,900.
Exciter and wiring	2,300.
Erection and freight, turbine and condenser	2,800.
Condenser, pumps and line to spray pond	26,500.
Remaining items same as first list	107,000.
	193,500.
Plus 20%	$232,200.
14-stage, 3500 KW. unit with air cooler	62,900.
Exciter and wiring	2,300.
Erection and freight, turbine and condenser	3,000.
Condenser pumps and line to spray pond	26,500.
Remaining items same as first list	107,000.
Plus 20%	$242,200.

Q. Is 82-14 one of the documents which was received in the mass of records which constitutes Exhibit 82?

A. Yes, it is.

Q. Was it taken by you from Exhibit 82 and produced here? A. Yes.

Q. Is it in the same condition it was received along with the rest of the material that constitutes Exhibit 82?

A. Yes.

Plaintiff's Exhibits 82-15 and 82-16 were marked for identification and received in evidence.

Plaintiff's Exhibit 82-15 is the minutes of a special meeting of the directors of North Dakota Power & Light Company held at Chicago, Illinois, on August 6, 1929, which meeting was held for the purpose of accepting resignations of officers and directors and appointing successors to fill the vacancies thus created.

Plaintiff's Exhibit 82-16 is the minutes of a special meeting of the directors of Northern Power and Light Company held at Chicago, Illinois, on August 6, 1929, for the same purposes.

The following table shows the directors and officers of each company whose resignations were accepted and also the persons who were appointed to fill the respective vacancies, such resignations and successor appointments being identical except that Frost succeeded Huffman as vice president of North Dakota Power & Light Company whereas Strike succeeded Huffman as vice president of Northern Power and Light Company.

Office	Resignation	Appointments
Director	Parkinson	L. B. Breedlove
"	Jacobson	T. T. Parker
"	Huffman	C. L. Sandstedt
"	Wilder	C. J. Strike
"	Ross	W. H. Frost
President	Jacobson	T. T. Parker
Treasurer	Morrison	C. L. Sandstedt
Asst. Treasurer	Brennan	J. F. Buckmier
Secretary	Horn	C. L. Sandstedt
Asst. Secretary	Dibelka	
Vice President	Lucas	
Vice President	Huffman	Frost
		Strike

Q. Is Exhibit 82-15, contained in the bound volume marked Hughes Electric Co., an exhibit which was taken by you from Exhibit 82? A. Yes.

Q. State whether or not it purports to show the directors' meeting of the North Dakota Power & Light Co. held in Chicago on August 8, 1929? A. It is. August 6th.

Q. And the election of the directors at that meeting?

A. Yes.

Q. Is Exhibit 82-16 contained in the bound volume marked Northern Power & Light Co., a minute [books] consisting of nine pages, one of the records which you took from Exhibit 82? A. Yes.

Q. Does that show the meeting of the board of directors of the Northern Power & Light Co. held at Chicago, Ill., on August 6, 1929, including the election of directors?

A. That is right.

Mr. Fellows: We offer in evidence Exhibit 82-15 and 82-16.

Mr. Royhl: We object to this as incompetent, irrelevant and immaterial, and being too remote, being minutes of August, 1929, a time prior to the issues in this litigation, and for the further reason that they have no bearing upon any issue in this case, and make the same objections separately to each Exhibit 82-15 and 82-16.

Mr. Benson: This is the time the record shows the officers and directors of the prior administration moved out and the new people moved in.

The Court: Objection overruled.

Mr. Fellows: Your Honor, I call your attention to the fact that in these exhibits it is disclosed that at the meeting of the board of directors, held at 3:55 P. M. on that date, and ten minutes later a meeting of Northern Power & Light Co. was held at the same place, same room, and identical directors of each corporation and identical officers of each corporation were elected for each corporation at this particular meeting.

Mr. Royhl: Is there something about that that is against the law?

Mr. Fellows: Yes. It is presumptively fraudulent.

The Court: There is no use counsel arguing the matter. It is evident you are unable to agree.

By Mr. Fellows: Q. Were you able to state from your examination of the records what the original voltage capacity of the Ellendale, Wetonka, Leola line was?

A. Yes.

Q. From what records can you determine that?

A. From the work order and the work order ledger.

Q. And they are part of what exhibit here? A. 82.

Q. Will you state what that voltage originally was.

Mr. Royhl: Objected to as not the best evidence; no proper foundation laid.

The Court: He testified he gained his information from these records. This is to save time. Objection overruled.

A. The record shows the line was designed to be 40,000 volts and to be immediately energized at 22,000.

Q. Can you state the date of the Lucas & Luick report?

A. The report is dated on the cover March, 1928. The transmittal letter is dated April 14, 1928.

Q. Can you state from your examination of these records what stations were eliminated after the date of the Lucas & Luick report? A. Yes, I think I can do that.

Q. That is from the Northern Light & Power property?

A. Yes.

Q. And from what records can you ascertain that fact?

A. From the financial statement of Northern Light & Power Co. primarily, and from the early reports that was kept by the Huron office.

Q. They are part of Exhibit what? A. 82.

Q. Will you state what stations were eliminated after the date of the Lucas & Luick report?

Mr. Royhl: That is objected to as self serving; hearsay; no proper foundation laid; not being shown that this witness has any knowledge of the fact, and it appearing that he is merely testifying from some entry within a book, and testifying therefrom to the fact of actual removal; not binding upon this defendant and not within the issues in this case.

The Court: The objection technically probably is well taken like a good many of the others, but in the interest of saving time here I am going to take the answers. Overruled.

A. Eureka, South Dakota; Hazleton, North Dakota; Ipswich, South Dakota; Lemmon was changed to standby basis; Leola was eliminated; McLaughlin was eliminated; Steele, North Dakota, Dawson, Pollock, Selfridge, North Dakota.

Q. In your audit and examination of the various records of these corporations were you able to find any corporate proceedings authorizing A. B. Sanborn, as president, to file certificate of concurrence, with the Federal Power Commission, which was filed December 28, 1939, purporting to concur in Northwestern Public Service Co. FPC Schedule No. 3, which is the interconnection agreement of October 7, 1936?

Mr. Royhl: We object to this as not the best evidence; calling for the opinion and conclusion of the witness; hearsay.

The Court: The question can be answered yes or [not]. Were you able to find such a record? Overruled.

A. No.

Q. State whether or not you were able to find any amended certificate of succession authorized by the corporate records of Dakota Public Service Co.?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. No.

Q. Were you able to find from any of the records any corporate action shown by any of the minute books, authorizing A. B. Sanborn to sign any certificates of concurrence on any of the contracts that are attached to the complaint, or to file any such contracts with the Federal Power Commission?

Mr. Royhl: Same objection.

The Court; Same ruling.

A. No.

Plaintiff's Exhibit 82-17 was received in evidence. It consists of a number of vouchers attached to a letter dated May 19, 1938, said letter and vouchers being taken from the mass Exhibit 82. The letter reads as follows:

United Public Utilities Corporation
20 North Wacker Drive
Chicago, Illinois

May 19, 1938

Mr. J. F. Buckmier,
North Dakota Power & Light Company,
Huron, South Dakota.

Dear Mr. Buckmier:

The April Financial Reports of North Dakota Power & Light Company and Northern Power & Light Company indicate that you are considering all of the purchased power and sales of power as interchange power. I have discussed this subject with Mr. Packman and Mr. Buell and we believe that this is correct in regard to the transactions between Northern Power & Light Company and Northwestern Public Service Company. The capacity charge, however, should also be included in the interchange power account. In the case of North Dakota Power and Light Company and Northern Power and Light Company, however, I do not believe that this is interchange power but instead should be recorded on a revenue and expense basis through accounts 2105 and 190.

As the 1937 figures of North Dakota Power and Light Company and Northern Power and Light Company have been published in the United Public Utilities Corporation and subsidiary consolidation, I do not think it advisable that the comparative figures should be adjusted. This will result in twelve months figures to date of Northern Power

and Light Company being on a different basis, but this is justifiable as the capacity charge was made effective January 1, 1988.

Please send us revised April income account and supporting schedules thereto, in accordance with the above.

Yours very truly,

R. McCLANAHAN

The vouchers read as follows:

Part of Plaintiff's Exhibit 82-17.

Form 305-616-5-37

JOURNAL VOUCHER NO. 4-59

Northern Power & Light Co.

(Stamp Name of Company Here)

MONTH OF APR 1938

Control	G.L. ✓	S.L. ✓	DEBIT	CREDIT

Record Miscellaneous Journal Entries.

82-17

Filed Feb 8, 1945
Roy B. Harker,
Clerk,
By C. C. Schwarz
Deputy.

38 1r

Prepared by	Date	Audited	Approved

328

Part of Plaintiff's Exhibit 82-17.

Form 205—625-5-37

JOURNAL VOUCHER NO. 4-59

Northern Power & Light Co.

(Exact Name of Company Here)

MONTH OF APR 1938

	Control	G.L.	S.L.	DEBIT	CREDIT
Line Stores	31.11	✓	*	33451 70	
Appliance Stores	31.31	✓	*	10217 36	
Jobbing Stores	31.33	✓	*	7102 42	
Unassigned Lamp Stock	31.35	✓	*	1774 89	
Fuel Stores	31.5	✓	✓	271 40	
Prepaid Insurance	32.4	✓	*	2083 40	
St of N.D. wh. tax. Elec. Dept	325	✓	*	785 57	
Store Expense Clearing	31	✓	*		06
Electric Distribution Expense	250	✓	✓	32 13	
Interchange Power	191	✓	✓	13694 98	
Electric Operating Revenue	2100	✓	✓	7463 20	
Delaware Franchise Tax Expense	956.4	✓	*	75 00	
Power Purchased	190	✓	✓	1651 68	
Interchange Power	191	✓	✓	7480 00	

*538c

Prepared by | Date | Audited | Approved

325

Part of Plaintiff's Exhibit 82-17.

Form 305—SM-6-37

JOURNAL VOUCHER NO. 4-59

Northern Power & Light Co.

(Stamp Name of Company Here)

Pg 2

MONTH OF APR 1938

	Control	G.L. ✓	S.L. ✓	DEBIT	CREDIT
Line Stores	31.12	—	*		33451 70
Appliance Stores	32.1	/	*		10217 36
Jobbing Stores	32.2	/	*		7102 42
Consigned Lamp Stock	32.3	/	*		1774 89
Fuel Stores	33	/			2714 10
Prepaid Insurance	36.3	/	*		2083 40
St by N.O. Wh. Lamp. Adv. Deferred	36.31	/	*		785 57
Jobbing Stores	31.33	/	*		06
Contrl Wh in Cryogen Perm Elec WO	3.11	/			32 12
Purchased Power	190	/			13694 98
Interchange Power	191	/			7463 20
Taxes Accrued	78	/			75 00
Interchange Power	191	/			16511 69
Power Purchased	190	/			7480 00

5382

Prepared by | Date 4-28-38 | Approved

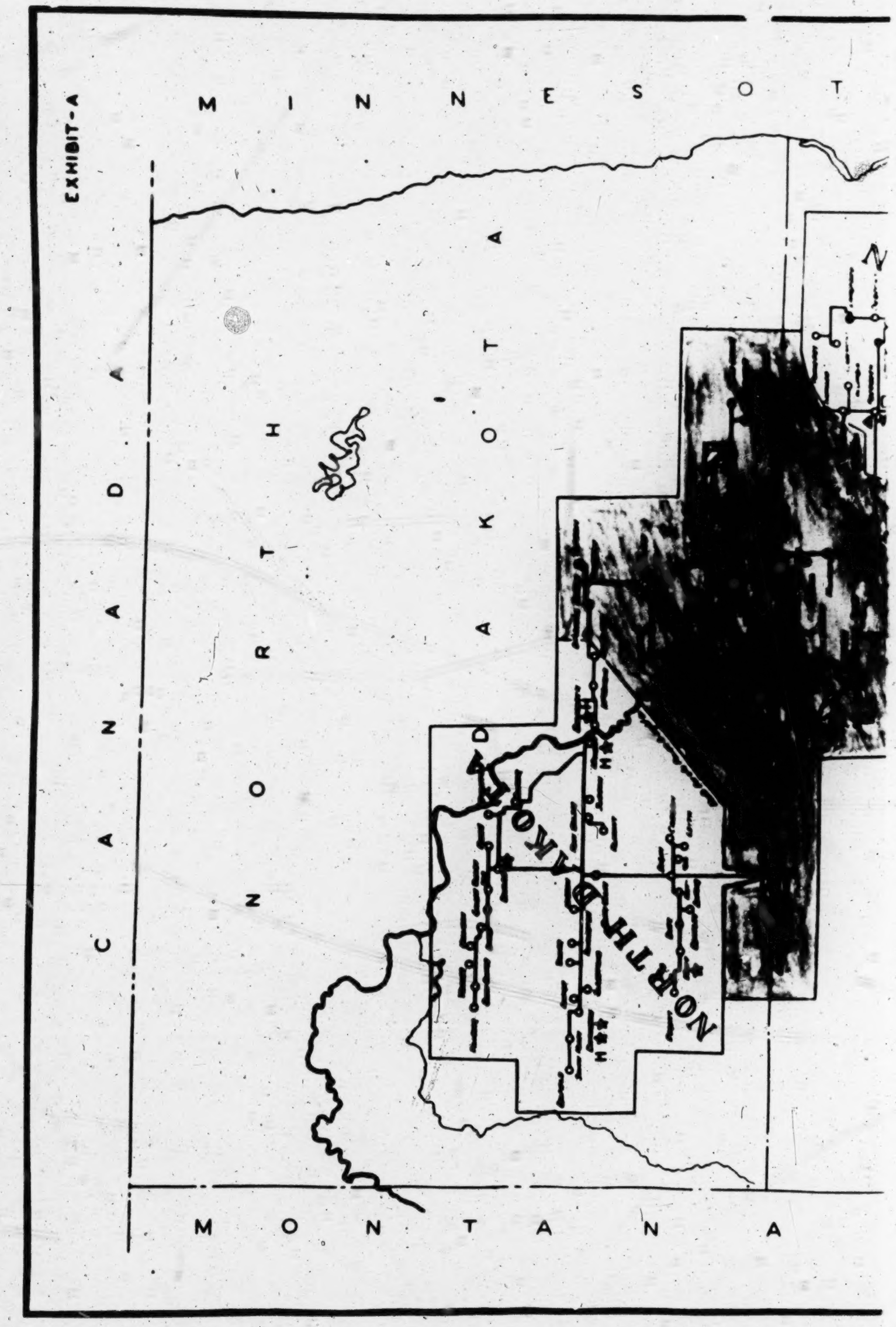
SAVINGS BY REASON OF OPERATING THE SYSTEMS OF NORTHWESTERN PUBLIC SERVICE COMPANY - NORTH DAKOTA POWER & LIGHT COMPANY AND NORTHERN POWER & LIGHT COMPANY AS AN INTERCONNECTED SYSTEM

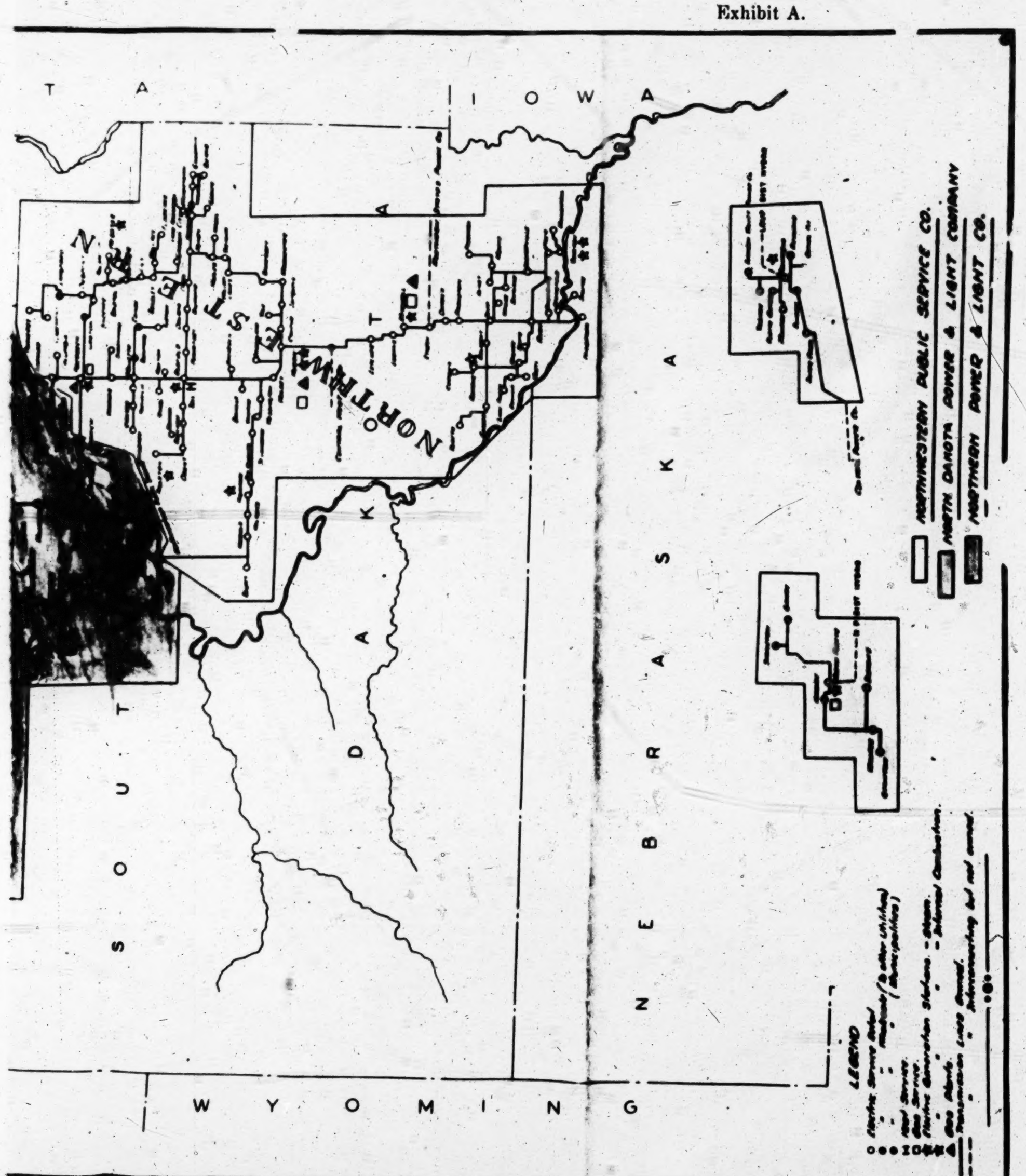
	Northwestern Public Serv. Company	No. Dakota Power & Lt. Company	Northern Power & Lt. Company	Total
PRESENT COSTS				
KWH Generated	47,868,585	34,772,029	3,725,338	86,365,952
" Purchased Outside	7,410,800	--	--	7,410,800
" " Inter Co.	3,673,240	--	12,639,756	--
Total Output	58,952,625	34,772,029	16,365,094	
COST OF POWER				
Generation	443,433.50	198,183.08	55,372.65	696,989.23
Purchased Outside	47,095.00	--	--	47,095.00
" Inter Co.	18,366.20	--	44,239.16	62,605.36
Total Cost of Power	508,894.70	198,183.08	99,611.81	806,689.59
COST PER KILOWATT-HOUR -Mills				
Generation	9.26	5.7	14.86	
Purchased Outside	6.35	--	--	
" Inter Co.	5.	--	3.5	
Total	8.63	5.7	6.08	
ACCOUNTED FOR				
Sales	46,535,241	30,303,487	11,324,120	
Company Use	1,091,832	152,314	132,949	
Total Accounted For	47,627,073	30,455,801	11,457,069	
Unaccounted For	11,325,552	4,316,228	4,908,025	
% Losses	19.21%	12.41%	30. %	
COSTS OF GENERATION WITHOUT INTERCONNECTION				
Additional KWH to be generated	3,673,240	3,673,240		
Losses Estimated 20%		734,648		
	3,673,240	4,407,888		
NORTHWESTERN PUBLIC SERVICE COMPANY				
Aberdeen - 2,754,930 KWH @ 5.6 mills	15,427.61			
Other Stations 918,310 KWH @ 7.1 mills	6,520.00			
Total 3,673,240	21,947.61			
Savings in cost of Inter Co. purchased	18,366.20			
Net additional cost	3,581.41			3,581.41
NORTH DAKOTA POWER & LIGHT CO.				
Beulah Savings 4,407,888 KWH @ 2.86 mills		12,606.56		
Loss in revenue KWH sold to N.P.S.L. Co. 4,407,888 KWH @ 3½ mills		15,427.61		
Net additional cost		2,821.05		2,821.05
NORTHERN POWER & LIGHT CO.				
Loss in KWH sold to N.W.P.S. Co. 3,673,240 @ 5 mills			18,366.20	
Savings in Purchased from N.D.P.S.L. Co. 4,407,888 @ 3½ mills			15,427.61	
Net additional cost			2,938.59	2,938.59
Total costs without Interconnection	512,476.11	201,004.13	102,550.40	816,030.64
Savings by reason of Interconnection	3,581.41	2,821.05	2,938.59	9,341.05

Plaintiff's Exhibit 216-A.

Exhibit A.

EXHIBIT-A





85

CANADA

NORTH DAKOTA

SOUTH DAKOTA

NEBRASKA

LEGEND

- Electric Service Retail
- " " Wholesale (To other Utilities)
- " " " (Municipalities)
- H Heat Service
- Gas Service
- Electric Generation Stations - Steam
- " " " - Internal Combustion
- Gas Plants
- Transmission Lines Owned - (22 K.V., 33 K.V. & 38 K.V. Lines)
- " " " - (Lines Under 22 K.V.)
- Interconnections

Scale 1 in = 20 mi.

Drawn By O.M.B. Sept. 13, 1939

Exhibit A

NORTHWESTERN PUBLIC SERVICE CO.

DAKOTA PUBLIC SERVICE CO.

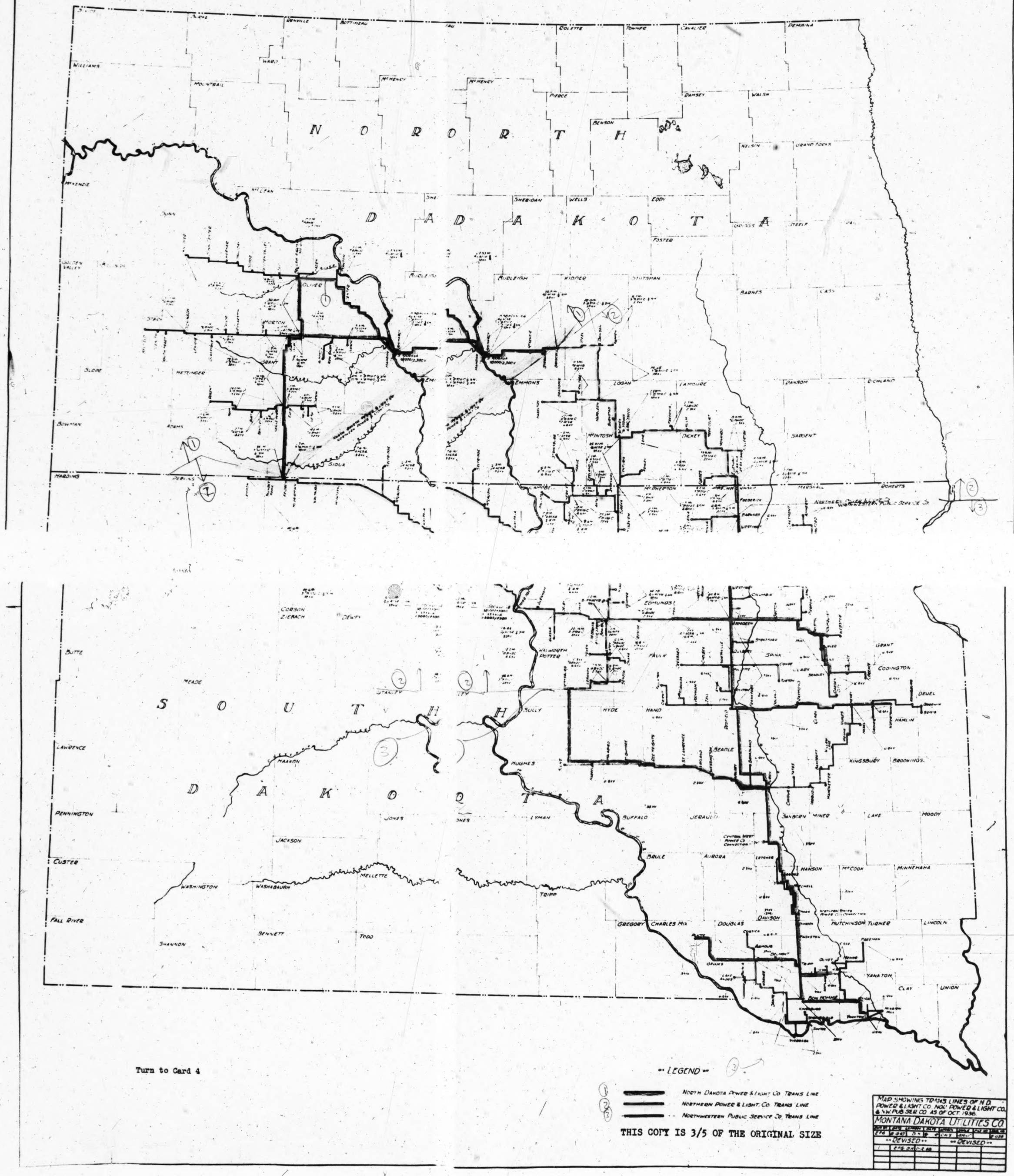
-85-

Turn to Card 2

Exhibit A.

Turn to Card 2

Plaintiff's Exhibit 15.



Turn to Card 4

Turn to C

Turn to Card 8

.449

449

ANNUAL PRODUCTION COSTS & KWH GENERATED PER
NORTH DAKOTA POWER & LIGHT CO.

MILLS P.R.L.L. KWH GENERATED

45,000,000
40,000,000
35,000,000
30,000,000
5
4
3
2
1

KWH GENERATED

TOTAL PRODUCTION COSTS

FUEL COST

OPERATING LABOR

MAINTENANCE

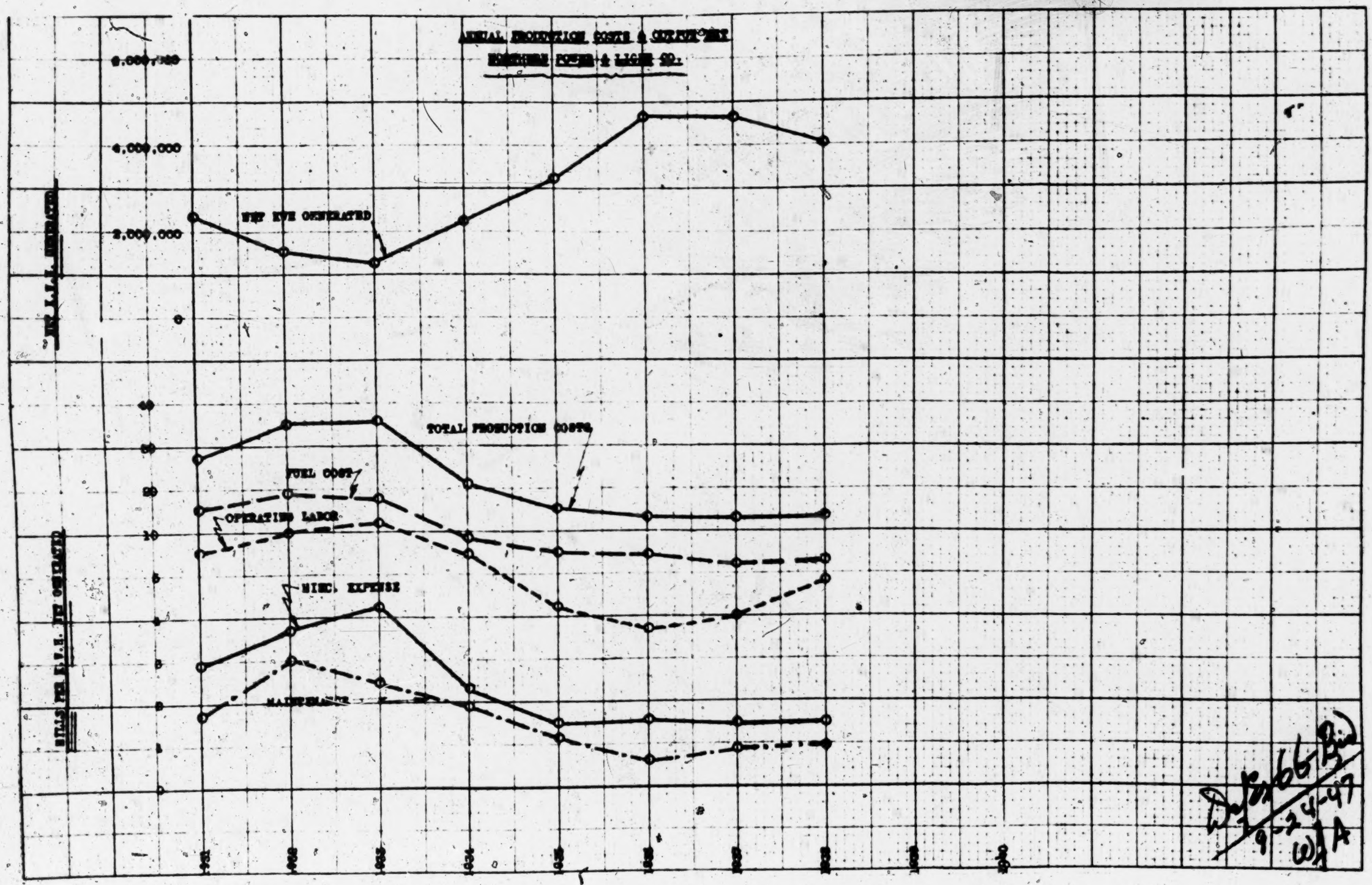
MISC. EXPENSE

1931 1932 1933 1934 1935 1936 1937 1938 1939 1940

Def Exhibit A-w
9-24-47
WJA

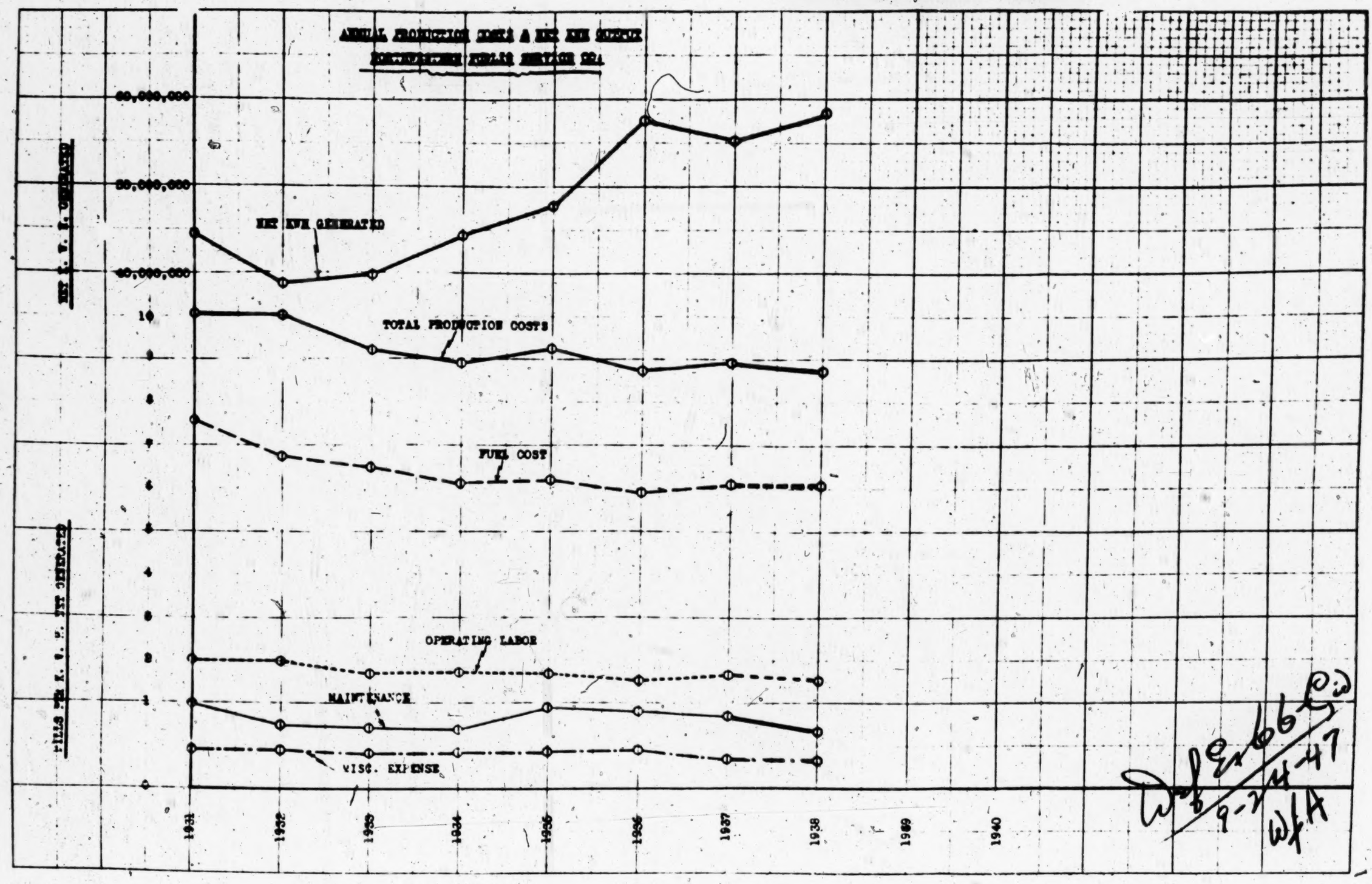
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451



453

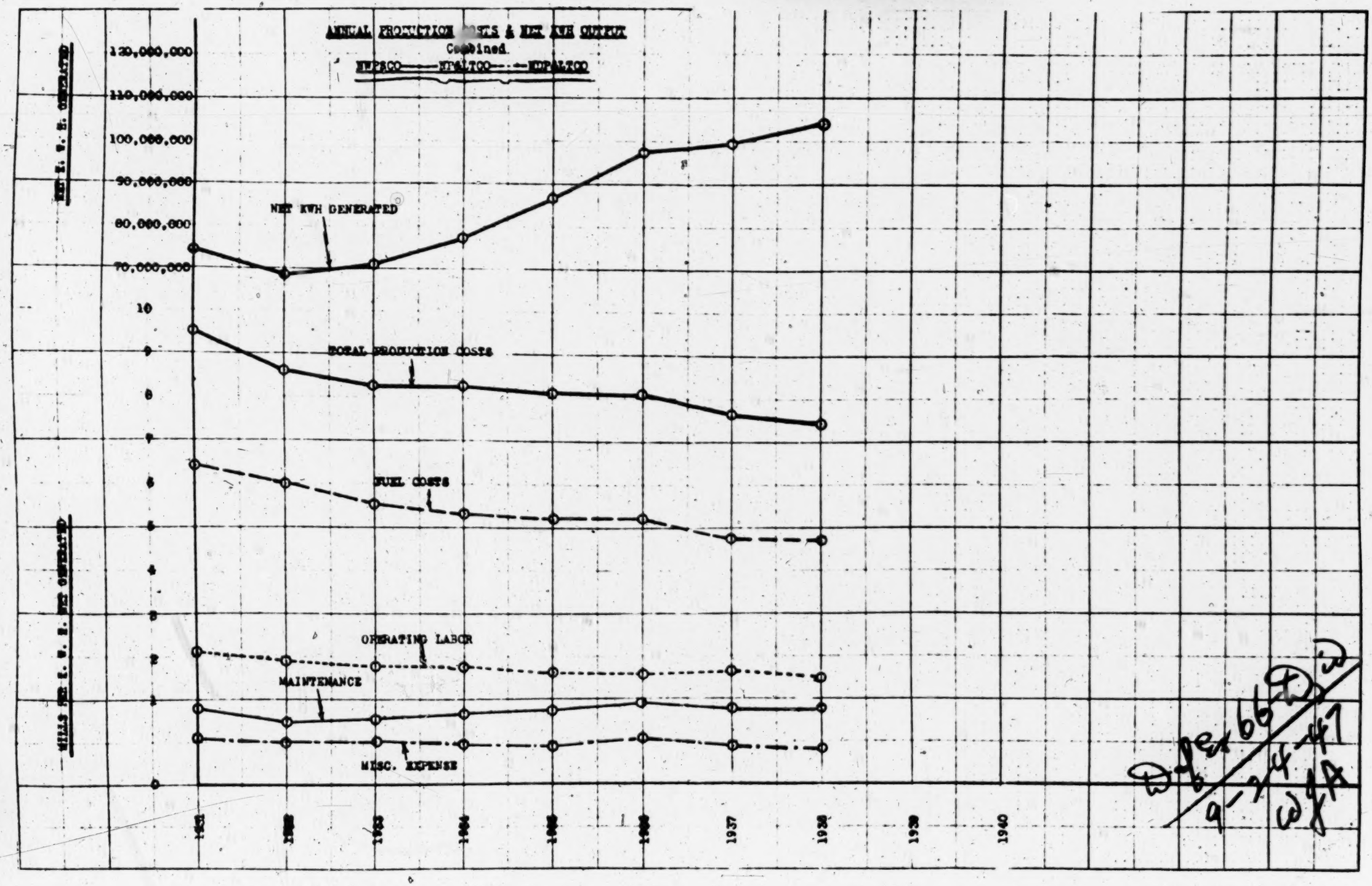
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455

Turn to Card 8

455



[redacted]

553

Turn to Card 9

Sales of energy by North Dakota Power and Light Company

1930
1931

1930	%	KWH metered		Rate	Amount	
June	77%	2[illegible]70	25[illegible]70	2½¢	2[illegible]93	
July	77%	[illegible]	279600	2½¢	2[illegible]70	
Aug	77%	[illegible]	95[illegible]30	2½¢	7[illegible]32	[illegible]
Sept	77%	[illegible]	57[illegible]75	2½¢	1[illegible]67	
Oct	77%	[illegible]	7[illegible]35	2½¢	1[illegible]50	
Nov	77%	[illegible]	7[illegible]80	2½¢	1[illegible]95	
Dec	77%	[illegible]	76[illegible]	2½¢	1[illegible]11	
			[illegible]10		[illegible]98	
[illegible]	[illegible]	[illegible]	[illegible]62	[illegible]	[illegible]76	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	

Plaintiff's Exhibit 85.

[redacted] Public Service Company, COMPANY

Schedule [illegible]

WORK ORDER

W.O. No. 347
Acct. No.

GENERAL DESCRIPTION Extending our 33KV line 18 miles from Ree Heights to Highmore and moving sub to Highmore and building 13 miles of new line from Harrold to Blunt.

ADDITIONAL DETAIL DESCRIPTION

This will enable us to shut down the present direct current plant at Blunt. The line from Harrold to Blunt will be 2/0 aluminum and built for 33 KV. The circuit from Ree Heights to Highmore will be 2/0 aluminum. This will enable us to carry the desired load over these lines when we tie in with the Norther Power and Light at Gettysburg in the future. Moving the sub from Ree Heights to Highmore will materially improve service as the regulation at Highmore is bad at present.

M. W. U. CO. ENG. DEPT. Approved [illegible] Date 11-23-29

OPERATING DEPT. M.W.U. CO. RECEIVED NOV 22 1929 APPROVED 11/23

ADDITIONAL INVESTMENT NECESSARY AND WHICH IS TO BE CHARGED TO THE PERMANENT WORK ORDERS

TRANSFORMERS $

METERS

BUDGET SCHEDULE NO. [illegible]

BUDGET SECTION $ [illegible]

WORK ORDER NO. $

ESTIMATED LENGTH OF TIME REQUIRED TO COMPLETE WORK AFTER APPROVAL 3 months

DATE COMPLETED Total Actual Amt., $

SUBMITTED BY Title

CHECKED 8/26/29 By E. K. Albert

APPROVED 11-20-29 By C. L. Sandstedt Vice President

APPROVED 9/11/29 By M. F. Low Vice President

APPROVED 11-19-29 By T. J. Rasch President

Filed Feb 12 1948 Rose B. Markey Clerk (OVER)

GROSS EXPENDITURE $43,801.84

OFFICE OF ORIGIN Huron, So. Dak.

DATE August 20, 1929

EXPENDITURE

NEW WORK

MATERIAL & EXP. $34,073.61

LABOR 4,620.00

TOTAL $38,693.61

LABOR REMOVING OLD WORK

MAINTENANCE

STORES DEPT. CHGS. 10%

GEN. OFFICE SUPERVISION $3,849.36

INT. ON IDLE INVESTMENT 838.45

GROSS EXPENDITURE 43,801.84

LESS CONTRIBUTIONS [illegible]

NET COST TO COMPANY $43,801.84

PROPERTY TO BE RETIRED

ORIGINAL COST

RETURN TO STOCK AT ORIG. COST

SALVAGE VALUE

DEPRECIATION

BENEFITS ACCRUING

INCREASED NET REV. PER YEAR $3000.00

% INCR. REV. TO COMPANY COST 6.8%

DECREASED EXP. PER YEAR $3600.00

% DECR. EXP. TO COMPANY COST 8.1%

MATERIAL

VALUE ON HAND

TO BE PURCHASED $34,073.61

TOTAL MATERIAL $34,073.61

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Turn to Card 9

Part of Plaintiff's Exhibit 55-6.

Form No. 78—4-27

Final Return Sheet — Auth. W.O. 397

Bureau Division — Description: Extending our 33 KV line 13 miles from Rae Heights to Highmore and moving substation to Highmore and 13 miles

Est. Cost 43,201.64 — Date Started June 1930 — Acct. Chgd. — $

Act. Cost 39,676.04 — Date Completed Sept. 1930 — Acct. Chgd. 1100 — $43.24

Under 8.16 — Acct. Chgd. 1119 — $4,121.00

Date Cleared Oct. 1930 — Journal Entry J 10-66 — Acct. Chgd. 1122.1 — $13,090.37

Acct. Chgd. 1123.1 — 22,421.43

Item No.	ITEM	QUANTITY Est.	QUANTITY Act.	AMOUNT Estimate	AMOUNT Actual	DIFFERENCE	ACCT CHG'D
1	35' poles	373	330	5,303 30	4,237 50		1122.1
2	40' poles	13	27	195 00	417 00		1122.1
3	30' poles	13	14	79 30	108 40		1122.1
4	10' cross arms	434	730	434 00	1,352 78		1122.1
5	72" angle braces	434	434	434 00	556 71		1122.1
6	8" carriage bolts	1342	1003	37 44	72 09		1122.1
7	10" machine bolts	600	442	60 00	48 15		1122.1
8	14" machine bolts	572	122	62 92	10 98		1122.1
9	16" D.A. bolts	156	48	25 40	7 20		1122.1
10	3/8" Galvanized guy strand	2000'	7250'	58 50	180 46		1122.1
11	Anchors	60	54	120 60	108 95		1122.1
12	Strain plates	120	124	9 60	10 88		1122.1
13	Guy hooks	120	188	9 60	15 17		1122.1
14	Guy clamps	120	119	24 00	25 04		1122.1
15	Steel pins and spur washers	1872	1875	1,216 80	3,[illegible] 84		1122.1
16	45 K.V. insulators	1872	669	4,118 40	[illegible] 20		1122.1
17	4/0 A.C.S.R.	[illegible]	[illegible]	2,500 00	13,[illegible] 53		1122.1
18	#6 alumi tie wire	500 #	887	150 00	70 89		1123.1
19	Alumi Armour wire	500 #		150 00			1123.1
20	Strain insulators	36	42	288 00	336 86		1122.1
21	Dead end clamps	36	18	72 00	22 41		1122.1
22	3 pole 6600 V switch	1		75 00	10 97		1119
23	Substation structure	1		1,200 00	4,253 47		1119
24	Lot for substation	1		50 00	34 10		1100
25	Substation foundation	1		200 00	168 00		1119
26	Substation fences	1		200 00	255 00		1119
27	Labor on Trans. structures			1,200 00	2,257 71		1122.1
28	Labor on Trans. conductors			2,400 00	2,648 85		1123.1
29	Labor on substation			500 00	570 71		1119
31	Incidentals			1,242 55	1,472 34		Overheads
32	Supervision			2,260 32	2,302 70		Overheads
33	Interest			638 45	629 53		Overhead
				43,201 64	39,676 04	(3,525 60)	

Summary

	Expenditure	Percent of Total	Overheads	Total		
Acct 1100	34.10	.11	9.14	43.24		
Acct 1122.1	10,250.60	26 .26	2,739.68	13,090.37	13090.37	
Acct 1123.1	17,728.53	56 .57	4,692.90	22,421.43	22421.43	
Acct 1119	3,662.15	10 .09	958.85	4,121.00	3551.10	
					17285.90	
	[illegible]	100 .03	[illegible]	[illegible]		

26.4 to 4

To

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Turn to Card 9

Part of Plaintiff's Exhibit 55-6

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Turn to Card 10

Plaintiff's Exhibit 88-A

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Division of Cost of Aberdeen Substations
as determined by H.R. Ehrig, using basic figures from
Defendants Exhibit 216

Sheet 1 of 2

Items	Labor	Incidentals	Overheads	Structure	33000-volt substation	Interconnecting facilities	Excessive overheads	Balance
Depreciable			476 81		1068 41			
					1819 18			
			476 91		2988 59			2859 10
allocate overheads (3%)			(476 81)		74 00		404 51	
Totals			—		2454 59		404 51	2859 10
Work Order N194	748 14		155000		14749			
					11367			
					1068 41			
					477953			
					5931 4			
					9943 6			
	748 14		155000		799450			1029964
allocate labor	(748 14)				748 14			
	—		155000		874264			1029964
allocate overheads (3%)			(155000)		26400		128800	
Totals			—		900464		128800	1029964
Work Order 278	90427	98027	149785		1176812			1515031
allocate labor and incidentals	(90427)	(98027)			185434			
	—	—	149785		1365246			1515031
allocate overheads (3%)			(149785)		41000		108785	
Totals			—		1406246		108785	1515031
Work Order 404	5348 79		1117923	1701385	157797	258 58		
				301652	87553	307874		
				49399		3169244		
						477029		
						273991		
						247023		
						131579		
						265317		
	5348 79		1117923	2054936	245350	1995595		5946683
allocate labor	(5348)			254779	30668	249432		
			1117923	2309715	276018	2245027		5946683
allocate overheads (3%)			(1113923)	61300	8300	67400	972923	
Totals			—	2371015	284318	2312427	972923	5946683

Sheet 2 of 2

Division of Cost of Aberdeen Substation
as determined by H. N. Ebbig, using basic figures from
Defendants Exhibit 216

Items	Labor	Incidentals	Overheads	Structures	33000-volt Substations	Interconnection Facilities	Executive Overheads	Balance
Work Order 1081	10041	11600	83598			527100		632339
Allocate labor and Incidentals	(10041)	(11600)				21641		
	—	—	83598			548741		632339
Allocate overheads (3%)			(83598)			16500	67098	
Totals			—			565241	67098	632339
Totals of Work Orders and Appraisal				2377015	2896487	2877668	1318057	9409227
Allocate structure - 40% - 60%				(2377015)	950806	1426409		
Allocated values				—	3847293	4303877	1318057	9409227

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Turn to Card 10

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Turn to Card 10

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Plaintiff's Exhibit 88-A.

Statement Exhibit showing Gross Abstracts to Expense and Operating Accounts & H.N. Wing

	Work orders 404	Credit - Unabsorbed materials, &c. 405	Balance	Operations Operating lines 2/9/425	Operations Expense lines 2/9/425	Total - 3 Columns and unabsorbed excess	Balance for General Note	To reduce overhead + 3%	Net Operating lines	To reduce expense lines subject 3%	Net Expense lines
Materials -											
Poles	1554117		1554117	901994	652123	(218489)	437634	-	437634	-	901994
Other distribution items	1020929	(188418)	832511	473469	358762	(114639)	247623	-	247623	-	473469
Total	2575046	(188418)	2386628	1375463	1010885	(333128)	677757		677757		1375463
Conductors	4816092	(776457)	4039635	2721612	1317823	(463613)	1354210		1354210		2721612
Total materials	7391158	(964875)	7026263	4097075	2928708	(796741)	2031967		2031967		4097075
Labor -											
Pole labor	1168242	(85843)	1082399	626601	455798	(151781)	304017	-	304017	-	626601
Conductor labor	502915	(8122)	494793	286436	208357	(69383)	138974	-	138974	-	286436
Total labor	1671157	(93965)	1577192	913037	664155	(221164)	442991		442991		913037
Other costs -											
Line poles	383209	(28167)	355042	205534	149508	(49786)	99722	-	99722	-	205534
Underground conduit	545549	(8808)	536741	310719	226022	(75465)	150757	-	150757	-	310719
Underground, inside buildings	942758	(36975)	905783	524253	381530	(127051)	254479		254479		524253
Total direct costs -											
Poles	4115516	(302468)	3813089	2207398	1605691	(534695)	1070996	-	1070996	-	2207398
Conductors	5858556	(945777)	5763779	3336767	2427012	(808461)	1618551	-	1618551	-	3336767
Total direct costs	9974073	(397005)	9577068	5544165	4032703	(1343156)	2689547		2689547		5544165
Depreciation -											
Poles	394962	(29039)	365923	211836	154087	(51313)	102774	(7050)	32130	(14561a)	117569
Conductors	562282	(9079)	553203	320249	232954	(77574)	155380	(10681)	45699	(24046)	176034
Total depreciation	957244	(38118)	919126	532085	387041	(128887)	258160	(17731)	80699	(38607)	293603
Interest -											
Poles	128375	(9436)	118939	68836	50103	(16674)	33429	-	33429	-	68836
Conductors	187716	(9951)	177765	102866	74899	(24948)	49951	-	49951	-	102866
Total interest	316091	(19387)	296704	171702	125002	(41622)	83380		83380		171702
Total Maintenance -											
Poles	4638853	(340943)	4297910	2488070	1810157	(602682)	1207475	(7050)	1134525	(145614)	2348070
Conductors	6608354	(964807)	5643547	3268882	2334865	(777108)	1557757	(10681)	1547076	(240146)	3268882
	11247378	(1305750)	10791457	6256952	4534534	(1379790)	3031987	(17731)	2854536	(385760)	5616952

Net charged to Expense Account

48567

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Turn to Card 10

Plaintiff's Exhibit 88-A. -583-

Gettysburg Substation Costs
as determined by H.N. Craig

		Equipment	Labor (allocated)	Social taxes, supervision, interest (allocated)	Excessive Overheads	Northern Power & Light Co. Property	Totals
Work Order 420 charges –							
Switches	③	12847.0	2446.00	562.50		⑤ 3968.66	(3 2400-volt transformers from Work to 420)
Switch houses	④	3328.74	636.00	1456.22		⑤ 1685.16	(" " " " ")
Regulators	⑥	2319.93	443.00	1016.00			
33 KV arrestors		114.34	21.86	49.68			
22 KV arrestors	③	1000.00	191.31	437.32			
Foundations		314.70	62.00	138.20			
Fence (from Wiley)		214.17		49.83			
3 33000-volt transformers		3126.50		357.00			
1 3 KVA transformer		97.30					
		12826.88	1796.17	4505.75		4653.82	
Labor transferred		1796.17	(1796.17)				
		14623.05	–	4805.75		4653.82	
overheads & accretals transferred (L-4)		-377.38		(4505.75)	3628.37		
Totals January 1, 1936		15500.43		–	3628.37	4653.82	23782.62
Changes since January 1, 1936 –							
1936 – voucher 3-9	①	39.24	(meters)				
" 3-9		1030.00	(meters, eqt.)				
1938 – voucher 8-27		261.82	(meters, etc.)				
" 8-31	①	(39.24)	(meters)				② (4653.82) (3 2200 volt transformers retired, 1942 general vouchers 4-30)
1943 – voucher 11-28		2210.00	(regulators)				
" 9-31	③	(1267.79)			(365.84)		
1944 – vouchers 4-31	④	(2101.05)			(669.18)		
" 10-31	⑤	(88.08)			(25.51)		
Totals of changes		49.90			(1000.53)	(4653.82)	(5604.45)
Balances		15550.33			2627.84	–	18178.17
Not in service, but not retired	⑥	(2928.71)			(850.44)		(3778.93)
Current balance December 31, 1943		12621.62			1777.40		14399.24

Notes –
Items ③, ④ and ⑤ should have been retired in December, 1941. Item ⑥ should have been retired in November, 1943

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Q. And is it in an unchanged condition now from the time you took it out? A. Yes.

Mr. Fellows: We offer in evidence Exhibit 82-17, the letter and the vouchers.

Mr. Royhl: Objected to as immaterial; not within the issues in this case; no proper foundation laid.

The Court: Overruled.

Mr. Fellows: Your Honor, this exhibit which was just received shows a letter from Mr. McLanahan directing book entries should be changed from purchased power to interchanged power.

(Plaintiff's Exhibit 82-18 marked for identification).

Q. Are the six ledger sheets bound together and marked Exhibit 82-18 taken by you from Exhibit 82?

A. Yes, they were.

Q. Are they in the same condition now as they were when delivered to you?

A. Except being bound together, yes.

Q. State whether or not, from your examination of the records, they refer to the McLanahan letter and vouchers that were offered in evidence as Exhibit 82-17?

A. They show that the instructions in the letter were carried out.

Mr. Royhl: You can answer that yes or no.

The Court: The question should be answered yes or no.

Mr. Fellows: We offer in evidence Exhibit 82-18.

Mr. Royhl: May we have the answer of the witness stricken from the record as not responsive.

Mr. Benson: I would like to ask the witness whether the Exhibit 82-18 contains entries changing the account of the item referred to in McLanahan's letter from purchased power to interchanged power?

The Witness: It does.

Mr. Royhl: Objected to as calling for the opinion and conclusion of the witness; not the best evidence; and for all of the reasons urged heretofore to this testimony.

The Court: There is an answer in the record. We will let it stand.

Mr. Royhl: We make the same objection to 82-18 that was made heretofore to 82-17.

The Court: Overruled.

Plaintiff's Exhibit 82-18 was received in evidence and shows that the charges under the interchange capacity contract (Exhibit C to Plaintiff's Complaint) for the first four months of 1938 were changed from the account "power purchased" to the account "interchange power".

Q. Did you, from the books and records of these various companies, prepare a statement or tabulation of the matters shown by the books or contained in the books and records which would show by years the installation by the northern companies of generating capacity from 1936 to 1945?

A. I have the record. I didn't make a tabulation.

Q. You found that in records. In what records did you find that material?

A. Work orders contained in Exhibit 82.

Q. Do those work orders in Exhibit 82 likewise show the installation by the defendant company during that same period of time? A. No, they don't.

Q. In 55, do they show that?

A. From 55 you can determine it, yes.

Q. Have you determined it from 55? A. Yes.

Q. Have you made a compilation of the entries in Exhibit 82 which show by years the installation by us or our predecessors, for each of those years so that you can testify to it?

A. I made a compilation for the years involved.

Q. Will you state what it is for those various years?

A. The generating units installed by Dakota Public Service Co. at Bismarck, 4000 kilowatt unit, which has usually been rated 3000 in these contracts. In addition to the generating unit there was two boilers installed. The generating unit installed in 1940. In addition there was two

boilers installed at Bismarck in 1938. Also a large boiler installed at Beulah in 1937.

Q. During that period of time, what do the records show were the installations for increase in generating capacity installed by the defendant corporation?

A. Since 1936 the defendant installed one unit, Diesel unit, of 980, sometimes listed 981, kilowatt capacity. I believe at Yankton.

Q. Do the records show the cost of the installation you have just testified to at both Bismarck and Beulah?

A. Yes.

Q. Will you state what those respective costs are as shown by the records?

A. The boiler at Beulah cost $172,226.02, according to the final return sheet in the work order on the records kept.

Q. As shown by the records of what Exhibit?

The Court: I understand it is shown by the records?

Mr. Woods: It is part of the records of the joint management.

The Court: It is the records of the companies involved in this law suit.

Q. Is it 82 you refer to?

A. Yes. The boilers at Bismarck which were installed in 1938, cost $142,541.12. The turbine installed in 1940 cost $349,979.74. When I state boilers and turbines I mean installation complete.

Q. Were you able to find from these records the cost of the generating facilities put in by the defendant company during that period of time? A. Yes.

Q. From what records? A. From Exhibit 55.

Q. Does that consist of the Yankton installation you have just testified to? A. Yes.

Q. Is there any record of any installation by the defendant company, or anything which increased their generating capacity, during that period, except the Yankton installation?

A. I find no increase until they installed the large turbine, which was not in service on October 19, 1945.

Q. Will you state now from the records you have taken from Exhibit 55, the cost of additional generating capacity installed during this period of time by the defendant corporation, and also the date of its installation?

A. I am sorry. I will have to qualify that answer. I don't believe those records are here. I got my information from an examination of the Huron office.

Q. Will you state from your examination of the Huron office what that was? A. Approximately $107,000.00.

Q. When you refer to the Huron office, you refer to the defendant's records in their Huron office, do you not?

A. Yes.

Q. Were you able to determine from your examination of these records whether or not there was a price drop in sales of energy by the northern companies to defendant corporation? A. Yes.

Q. From what records were you able to determine that?

A. From records included in Exhibit 82.

Q. When did the first price drop occur?

A. Did you say between Northern and Northwestern?

Q. Yes.

A. I don't think I can explain that just by date.

Q. Will you explain it so it will answer the question?

A. To begin with, Northwestern and Northern were interchanging power in a small way. Then Northwestern began to buy power direct from North Dakota Power & Light, as appears in the record here, between June, 1930 and February 1931, inclusive. At that time the price was three fourths of a cent. On March 1, 1931, the transactions were directly between Northern Power & Light Co. and Northwestern Public Service Co. and at that time the price was continued at three fourths cent per kilowatt hour. On February 1, 1932, the price was changed so that the first 225,000 kilowatt hours per month were at 7.5 mills, or three fourths of a cent, and the excess .45¢.

Mr. Royhl: Do you mean 4-1/2 mills?

A. Yes. Then on January 1, 1933 the price was changed to 5 mills, and it has continued at that price during the life of the contract. That is, until after the date the Montana Dakota acquired the stock of the company.

By Mr. Royhl:

Q. You were not talking about anything but energy rates?

A. I would say there was if you bring it right up to date.

Q. You are talking about a provision made in August, 1937, aren't you, 1947?

A. That was the purpose of my limitation.

Q. Excluding your arrangement of August, 1947 with the defendant company, the five mill rate was never changed after January 1, 1933, was it? A. No.

By Mr. Fellows:

Q. Were you able to determine and can you now state from your examination of the records when the [Buelah] turbine was installed? A. Yes.

Q. From what records can you ascertain that fact? From Exhibit 82? A. Yes.

Q. Will you give that date?

A. It was installed in 1928. That is, the second turbine at [Buelah].

Q. And at what cost?

A. I didn't tabulate those costs. We have the ledger sheets here.

Q. Were you able to determine from your examination of the records, the ages of the property in the interconnection facilities as of January 1, 1936? A. Yes.

Q. By ages of the property, I mean the dates they were installed? A. Yes.

Q. What was the age at that time of the pole line to Harrold?

Mr. Royhl: We object to this as no proper foundation laid; it not being shown that this witness has any knowledge concerning it; wholly opinion and conclusion, and not within the issues in this case.

The Court: He is merely testifying as to what the records show. Overruled.

A. I observed from a part of the records in Exhibit 55 that the pole line, but not including conductors and 33 KV line, was installed in 1936 from Harrold to Highmore.

Q. When was the rest of the interconnection facilities built?

Mr. Royhl: May we have the same objection to this line of testimony?

The Court: The record may show the same objection and the same ruling of the Court.

A. From the fall of 1929 to sometime in September, 1930.

Q. Is that all information you got from Exhibit 55?

A. Yes. I want to qualify that just a little bit. There were alterations throughout the period, the principal ones being in the Gettysburg substation and Aberdeen substation.

Q. Do the records show what the alterations consisted of? A. Yes.

Q. And when they were made? A. Yes.

Q. Can you state now from the examination of those records the date of such alterations, and their nature?

A. Yes, I can.

Q. Will you do so?

A. The changes in the line from Highmore to Gettysburg, they were minor matters. I didn't tabulate them in any way. The changes on the other line, that is from Aberdeen to Barnard and Aberdeen to Ipswich, were all of minor importance except when Dakota Public Service Co. rebuilt its line from Bowdle to Ipswich, the Ipswich to Aberdeen line was shortened and there were other minor changes. I have shown on the schedule covering those two lines some alterations at the bottom.

Q. That is in Exhibit 88-A? A. Yes.

Q. It appears there?

A. Yes. I wanted to state there is a minor error in that figure of a couple of hundred dollars, covering the numbering of poles.

Mr. Benson: Do you want to clear up that error and state where it is in the exhibit?

A. Yes. Where I say, "net additions to Barnard line, $485.67", it should read—I believe that was corrected before the exhibit was drawn. Anyway, the item I had in mind was numbering of poles in 1931. The aggregate

amount involved is $193.00. The other changes were on the two substations. On the schedule covering Gettysburg substation we show continuity down to the time of my examination, and the correction I thought should be made, which I note now has been made on the record.

Mr. Robinson: Which exhibit?

A. Gettysburg substation, in Exhibit 88-A. You will note I included in Exhibit 88, $15,540.43, and that figure appears about the middle of the page in the first column containing figures. Below that I have shown the number of increases or decreases. The decreases are in parentheses. Opposite some of those figures are code numbers, which refer to code numbers on the upper portion. Now, the item encircled, 5, 4, 3, represent values or recorded costs or equipment which became of no value to this substation at the time the [Buelah] transformer was put in.

Mr. Royhl: We move to strike out this statement as to value or no value as not responsive to the question, the question merely asking for changes; and the further reason this witness is now shown qualified to determine value of operative equipment.

The Court: I am not clear. One of those questions called for costs of installation.

Q. Are the charges self explanatory, on Exhibit 88-A?

A. On the Gettysburg section of Exhibit 88-A.

Q. What was the other substation?

A. On the Aberdeen substation.

Q. Are the charges self explanatory in the exhibit?

A. No. I didn't record anything beyond the opening date of the contract.

Q. There have been changes in the Aberdeen station since the date shown on Exhibit 88-A? A. Yes.

Q. When did those changes take place?

A. They took place at various dates, the principal item being in 1941.

Q. What was that?

A. That was the installation of 5000 KVA transformer.

Q. Do the records in 55 show the cost of the transformer?

A. Yes.

Q. How much? A. $13,761.04.

Cross Examination, by Mr. Royhl.

Q. How old are you, Mr. Elvig? A. 50.

Q. You say you have been employed by the plaintiff for approximately twenty-three or twenty-four years?

A. About twenty-three and a half, yes.

Q. What did you do before you were employed by the plaintiff?

A. Do you mean you want continuous history up to that date?

Q. What did you do before you were employed by the plaintiff?

A. I started high school. In high school I took a commercial course.

Q. Commercial course in what?

A. In accounting, shorthand, typewriting, commercial arithmetic, commercial law, and at the same time my manual training teacher interested me in the hobby of electricity, which I followed under his direction throughout my high school years.

Q. Where was that?

A. Little Falls, Minnesota. I went to business college in Little Falls for about three months. That takes us through 1917. The next summer I worked in a saw mill there, but most of my duties consisted in helping the millwright, and blacksmith and saw filer. Then I got into the army and I was sent to Dunwoody Trade School, where I took the army's course as electrician. I had just completed it when the war ended. The next year I worked in railroad shops where I swung a sledge hammer. The next year I installed burglar alarms in banks throughout western and northern Minnesota. In 1930, I guess, I went out to large logging camps in northern Minnesota where I built camps, built roads, railroads, and conducted all of the operations of getting out time and load them on cars. I was camp clerk where I was responsible for the time keeping, and keeping supplies for men and horses, and all equipment necessary. Generally camp accountant. I did that for two seasons with a short lay-off in the summer of 1921. I came home in May and I was invited to go to work for Little Falls Water Co. My first job was cashier. It lasted about a month. I was transferred out of the city. At the end of the three months

the accountant was transferred to another number. I inherited the records and learned them the hard way. I was there until the property was sold to Electric Bond & Share Co. I decided I didn't want to go back to keeping routine records so I went out to the west coast where I worked for Puget Sound Power & Light Co.

Q. In the clerical department?

A. The first four or five months I was at Port Dawson where I did everything from selling electric ranges and collecting accounts and issuing materials for men taking out, Prepared work authorizations. Everything that has to be done in an accounting way. The division manager was a very old man. Then I was transferred into the general office in Seattle, where I worked on construction records primarily, and along late in the Spring I decided to come back in Minnesota, which was just about the time the Minnesota Northern was incorporated, which is the present Montana Dakota. Mr. Stephens, whom I had worked under in Little Falls had taken a job as assistant treasurer and wrote and invited me to join his organization.

Q. You went in the clerical department, did you? What year was that?

A. I didn't go into the clerical department. In 1924, July 14, I kept general records of the parent company.

Q. Is that when you started work, in 1924?

A. That is when I started to work for this company.

Q. That is what I am talking about. A. That is right.

Q. You were then working for the assistant secretary, were you, under his direction? A. Yes.

Q. And that was in the accounting department? A. Yes.

Q. What are your duties now?

A. Well, to begin with, I am responsible for the operation of the division offices.

Q. At what point?

A. About fifteen of them. About 210 employees. I also—

Q. That is a matter of books and records and auditing, etc.? A. That is right.

Q. What do you do now?

A. In addition to what I have narrated, I am responsible for the operation of the auditing and statistical department in Minneapolis and fixed capital records. I look after all of

the mechanics of paying taxes on the property now totalling fifty million dollars. I appear annually before the South Dakota Division of Taxation for the company. I have done so for fifteen years, in regard to these South Dakota taxes. I prepare the company's federal income taxes; state income taxes. I am responsible for the preparation of all of the government reports, both federal and state, both regulatory and in the way of taxation. I make all rate studies for the revision of electric and gas rates in our company. I made the original cost study of both gas and electric properties for our companies for Federal Power Commission. I have had an important part in preparation of registration system for practically all of the financing since FPC originated. I am generally assigned to help and assist federal and state regulatory auditors, including the Federal Power Commission, and bankers and insurance men and outsiders who need information from the records. I have personally investigated several properties we have bought since 1935, and a number that we haven't. I have followed through and picked up the records in any offices organized to our system of accounting. I have opened most of the division offices on the property and taken over the existing records way back to 1928. I have been on all of the major construction projects, and most of them I have been on for a considerable period during the active construction. There are many other duties. I think that pretty well summarizes them.

Q. You have a president, do you? A. Yes.

Q. And you have a vice president? A. That is right.

Q. How many vice presidents? A. Two.

Q. Do you have a secretary? A. Yes.

Q. Who is your secretary?

A. Mr. Aytch Woodson.

Q. Do you have an assistant secretary? A. Yes.

Q. And assistant to the president? A. No.

Q. Do you have a treasurer? A. Yes.

Q. Do they have any duties with regard to the operation of the corporation? A. Certainly.

Q. Do you have an engineering department? A. Yes.

Q. Who is at the head of your engineering department?

A. Mr. Smith.

Q. He is a vice president, isn't he? A. That is right.

Q. He works at his duties, does he? A. Certainly.

Q. Do you have engineers in the field? A. Yes.

Q. Do you have other engineers than Mr. Smith in your head office? A. Yes.

Q. Mr. McDonald? A. Yes.

Q. Any others?

A. Mr. Frederickson, cost engineer, and Mr. Pearson.

Q. How many men do you have in the field who are engineers? A. I would not know.

Q. A large corps of them?

A. I don't know their professional standing. There are a number of men who work on technical subjects.

Q. That is on production and operation?

A. That staff is quite limited.

Q. Transmission and distribution?

A. Primarily, Mr. McDonald. I am talking about the time prior to the inclusion of Dakota Public Service.

Q. Has that been changed any since?

A. We naturally inherited the staff at Dakota Public Service Co., and Mr. Bayles.

Q. You spoke of Mr. Bayles concerning a schedule or tabulation. What Bayles is that? A. He is Mr. Ed Bayles.

Q. Was he formerly with the interconnected companies, here in Huron operation, as a part of that joint plan of operation?

A. I understood he worked for Northwestern Public Service.

Q. From whom did you understand that?

A. It was just an impression.

Q. You can tell by referring to the records in 55 and 82 that he was a part of the joint staff of the interconnected operations, couldn't you?

A. From the payroll records I would say he worked for Northwestern.

Q. (Read) You can tell by referring to the records in 55 and 82 that he was a part of the joint staff of the interconnected operations, couldn't you?

A. I didn't draw that conclusion.

Q. You did not? A. No.

Q. You would not say that was not a fact, would you?

A. I don't like to characterize that joint staff. He worked on three properties.

Q. And the Dakota Public Service Co., and the Northern Power & Light Co. and the North Dakota Power & Light Co., paid a portion, a regular portion of his salary, didn't they?

A. They paid Northwestern Public Service Co. a portion of his salary.

Q. The account was cleared through Northwestern Public Service Co. books. That is what you mean, don't you?

A. Yes.

Q. Under this joint management agreement?

A. I think my statement is correct.

Q. You know Mr. Bayles worked on these interconnected corporations since about 1930?

A. I don't have a recollection of the exact date.

Q. He is now working for the plaintiff, isn't he?

A. That is right.

Q. And he is a technical electrical engineer, isn't he?

A. Yes, I believe so.

Q. Is he stationed now out on the Dakota properties?

A. He is at Bismarck.

Q. That is where his headquarters is. Do you know what position he held when he was paid by these interconnected companies?

A. I believe I have heard he was transmission and distribution superintendent.

Q. Do you know how many engineers he has under him, if any? A. No, I haven't any idea.

Q. That is the same man you say you used a Bayles tabulation that Mr. Mauch or someone showed you?

A. I presume so.

Q. Some tabulation that he had made? A. Yes.

Q. And that was 303 tabulation, was it not?

A. My testimony on that should have read Bayles and Gazin.

Q. It is the same Bayles? A. I assume so.

Q. You don't mean to infer, do you, that you represented the company on engineering matters, referring to the plaintiff? A. Well, I would not exclude it in some ways.

Q. I mean outside of this law suit?

A. No. I won't make that statement either.

Q. When the plaintiff purchased the Dakota Public Service Co., did you go up in the capacity of an engineer to make an appraisal of the property?

A. I went out in company with Mr. Heskett and examined key points on both Dakota and Northwestern company.

Q. Did the plaintiff in addition to your examination get a firm of engineers to make an appraisal?

A. We employed a firm of engineers in order to secure the necessary certificates.

Q. At any rate, you employed a firm of engineers?

A. That is right.

Q. They were Day & Zimmerman of Philadelphia?

A. Yes.

Q. People of national scope? A. Yes.

Q. And they made a very exhaustive study and report of their study, didn't they?

A. I would not say the report was exhaustive. It was made for a particular purpose.

Q. They made a report then? A. Yes.

Q. They also made an integration report, didn't they?

A. Yes.

Q. You are familiar with the report? A. I have seen it.

Q. Now, you say you went out on the property with Mr. Heskett. At the time the plaintiff purchased the Dakota Public Service Co. property the plaintiff employed Arthur Young & Co. to audit the property?

A. Yes. That was also for a special purpose.

Q. You have reviewed this audit and this survey by these auditors and these engineers?

A. Yes, I have examined them.

Q. And you are familiar with them?

A. I was at the time.

Q. Had these engineers and these auditors represented you prior to this time in 1945? A. Yes.

Q. Do I understand that you can state positively when the Gettysburg transmission line, when construction on that was instituted, actually, physically, practically started to be built?

A. I can do so from your records, I think. From an examination of them.

Q. Did you testify as to when it was started, when construction was started? A. Yes.

Q. When was that?

A. I believe I said in the fall of 1929.

Q. Will you show the entry from which you made that conclusion?

A. This work order 404. It covers facilities in the Aberdeen area. The Aberdeen substation, Aberdeen to Barnard line, Aberdeen to Ipswich line. It states on the authorization, "Work started October, 1929, and completed October, 1930."

Q. That is the Aberdeen end? A. Yes.

Q. I am speaking about the Gettysburg transmission line.

A. Work order 420. This covers part of the Gettysburg Highmore line. These two jobs were intermingled so they could not be sorted out. This states "Began November 1929, completed October, 1930." The reason I went around the other one, it doesn't seem to be in the files.

Q. Would this be the one?

A. Yes. That is what I am looking for.

Q. That is an exhibit?

A. This one says—This is work order 397, Plaintiff's Exhibit 55-6. First started in December, 1929 and completed in September, 1930. I want to qualify my answer. There is a part of this line covered by another authorization here, No. N-138, which seems to be of a different type or form. It is part of April 24, 1926. But it has written in ink on it, "Work completed August 1, 1926." As I understand, that covers the pole line from Highmore to Harrold.

Q. Now, then, you produced Exhibit 55-6 and 55-7, and you observed, did you not, that the work order 55-6 and the duplicate 55-7, were signed by Mr. Albert as of August 26, 1929? A. I see it now. I probably saw it before.

Q. You also observed, did you not, in Plaintiff's Exhibit 86, that the Pierre election was held on September 3, 1929? A. Yes, I was aware of that.

Q. Now, will you refer again to Plaintiff's Exhibit 55-6 and 55-7 and observe that the further approval of this work order was made by C. L. Sandstedt, as of November 20, 1929?

A. It seems evident his name signed by somebody else.

Q. You also notice that Frost signed as of September 11, 1929? A. Yes.

Q. And that T. P. Parker, the president, signed as of November 19, 1929? A. Yes.

Q. And it was cleared through the engineering department of the Middle West Utility Co., on November 22, 1929? A. It has an approval stamp of that date, yes.

Q. And with a further operating department approval stamp of Middle West Utility Co., as of November 22, 1929?

A. Yes, and pencilled date of November 23.

Q. Pencilled date of November 23. That does not show 1929 does it? A. No.

Q. If Mr. Albert had signed before the Pierre election, and the balance of these men had signed after the Pierre election, wouldn't it be natural, in the course of the business of a power company to have erased the words "and Pierre" from this work order?

A. I don't think anybody would ever have bothered with it.

Defendant's Exhibit 219 was received in evidence. It consists of the minutes of the annual meeting of stockholders of Northern Power and Light Company held on April 21, 1936 at 2:00 P.M. at the office of the corporation, 100 West Tenth Street. Wilmington, Delaware, pursuant to notice duly mailed. Said minutes include, among other things, the notice of the meeting subscribed by C. L. Sandstedt as Secretary, together with his affidavit of mailing, the certificate of the inspectors of election, the proxy vote cast for the election of directors, the certified list of common stockholders as of April 1, 1936, and the proxy executed April 4, 1936, by Provident Trust Company of Philadelphia, Trustee under Trust Indenture of United Public Utilities Corporation dated January 1st, 1935, covering all of the stock standing in the name of said Provident Trust Company of Philadelphia, as trustee as aforesaid, and authorizing the proxies therein named, among other things, to vote for the election of a Board of Directors of said Northern Power and Light Company consisting of M. C. Blackstun, F. E. Kruesi, C. L. Sandstedt, C. J. Strike and S. W. White. Said minutes show, among other things, that at said meeting the Provident Trust Com-

pany of Philadelphia, as trustee as aforesaid, as owner of the 5,388 shares of common stock outstanding as of April 1, 1936, was represented at the meeting by Alfred Jervis, one of the individuals named in the aforesaid proxy, executed by said stockholder; that John E. Barber and O. B. Dendtler were chosen as Chairman and Secretary, respectively, of the meeting; that said Dendtler and P. A. Linskey acted as inspectors of election and filed their certificate showing that the 5,388 votes were cast in favor of the election as directors of Northern Power and Light Company of M. C. Blackstun, F. E. Kruesi, C. L. Sandstedt, C. J. Strike and Samuel W. White, which votes were cast by said Alfred Jervis as proxy as aforesaid; that the annual report submitted by the directors for the preceding calendar year was presented and read and was duly approved and ordered filed; and that the records and minutes of all meetings of the directors of Northern Power and Light Company held since the last preceding meeting of the stockholders were presented to the meeting for inspection and examination by any stockholder desiring to make same.

Q. With respect to Exhibit 85, which is a tabulation of sales of energy during the year 1930 and part of 1931, you stated, I think, that you got that information from this Exhibit 82, which includes all of the records? A. Yes.

Q. Will you produce the part thereof that you used on arriving at these computations?

A. It is in the record now.

Q. Do you refer to Exhibit 82-1? A. Yes.

Q. And your first column heading, what does that refer to?

A. That is supposed to represent the delivery of power—

Q. I am talking about the heading? A. Elgin.

Q. Is that a town in North Dakota?

A. Yes. It is a metering point on the line south from Beulah to Aberdeen.

Q. Does Exhibit 82-1 show all of the records from which you took all of the figures in Exhibit 85?

A. I believe so. I made that for my own use about eighteen months ago. I didn't know it was going to be an exhibit.

Q. And this study, Exhibit 85, was your preparation?

A. Yes, for my own use.

Q. Is there any part of Exhibit 82-2 which you used in the preparation of Exhibit 85?

A. I believe I used 82-2 to find the vouchers from which to select information.

Q. There would be no computation here, then, that would be used by you?

A. No, but when vouchers are in numerical file I have to have some means of locating the proper vouchers and I used this record to get them.

Q. It was a matter of locating vouchers only?

A. That is what I used it for at the time, but it records the history.

Q. You are a stockholder in the plaintiff company?

A. Yes.

Q. In quite a substantial amount? A. Yes.

Q. Does it represent a good portion of your personal fortune? A. Yes, I guess so.

Q. You know it does, don't you?

A. I was just wondering about what your interpretation was.

Q. During your examination you listed increased generating units installed between and including the year 1936 and 1945, did you not?

A. I specifically excluded 1936, I believe.

Q. You did not include 1936?

A. That is my recollection of it.

Q. If I understand you correctly you claim the only new generation provided by the defendant during that period of time was at Yankton? A. Yes.

Q. What is the source upon which you base your statement of what generation was created during that period of time?

A. Primarily Federal Power Commission reports.

Q. Will you produce the document that shows the various plants that you claim were constructed after 1936. Do you have them? A. Yes, I have.

Defendant's Exhibit 55-9 was received in evidence. It is a copy of the verified Annual Report filed by defendant with the Federal Power Commission for the year ended

December 31, 1945, and, in part, sets forth the following information:

Item 101—the officers of defendant and their addresses.

Item 102—the directors of defendant and their addresses and terms.

Item 103—the corporate control over defendant, showing such control to be sole, complete and direct through common stock ownership by North West Utilities Company.

Item 104—shows security holders and voting powers and lists the persons holding securities with their respective addresses, the total number of votes, and the type of stock or other securities with voting power owned, together with the total number of votes entitled to be cast and the number cast at the last general meeting for the election of directors.

Item 200—sets forth the comparative balance sheet showing figures for both the beginning of the year and the end of the year.

Item 274—shows accrued and prepaid taxes including ad valorem taxes.

Item 300—shows the income and earned surplus account together with increase or decrease from the preceding year.

Item 420—shows taxes charged during the year including ad valorem taxes.

Item 427—shows service contract charges by associated companies and sets forth that Middle West Service Company rendered such services in connection with engineeering, purchasing, commercial, accounting, rate, merchandising, income tax and other matters, that it charged for such services on a cost basis under a contract dated February 16, 1937, running for an indefinite period, that such contract had not been approved by the Commission, and the aggregate paid for such services and expenses during the preceding year broken down between electric, gas and heating divisions.

Item 428—shows management and engineering contracts with non-associated companies including the same kind of information as that included under Item 427.

Item 500—shows the original cost of electric plant in service at the beginning of the year together with additions and retirements during the year broken down into the subdivisions of intangible plant, production plant (steam, hydraulic and internal combustion), transmission plant, distribution plant and general plant.

Item 530—shows sales to other electric utilities (but did not set forth any sales of power by defendant to Dakota Public Service Company).

Item 536—shows rents received during the year for the use by others of electric property owned by defendant (and shows receipt by defendant from Dakota Public Service Company for "lines and substations for interconnection" in the sum of $20,000.00).

Item 551—shows purchased power (but does not set forth any power purchased by defendant from Dakota Public Service Company).

Item 552—shows interchange power and, in detail, all kilowatt-hours received and delivered during the year and the net charge or credit under interchange power agreements. Subdivision A shows a summary of interchanges according to companies and points of interchange, including the designation of the other companies as either associated or nonassociated utilities, associated or nonassociated nonutilities, or municipalities; whether the interchange was intrastate or interstate; the voltage at which energy is interchanged; and the kilowatt-hours received, delivered and the net difference; and the amount of settlement in dollars. The report sets forth, among other things, the interchange between defendant and Dakota Public Service Company, the latter being classified as a nonassociated utility and the interchange as intrastate; the points of interchange as being Aberdeen and Gettysburg, South Dakota; the voltage as being 33,000/38,000; 10,625,500 KWH received; 1,937,120 KWH delivered; the net difference of 8,688,380 KWH; and the amount of settle-

ment as being $20,447.50. Subdivision C shows the details of settlement for interchange power including names of the companies with which defendant interchanged power, remarks, demand charges, energy charges, other charges and total settlement. The report sets forth as to defendant and Dakota Public Service Company energy charges due from defendant to Dakota Public Service Company of $43,441.90 with an offset for "other charges" which, as stated, "represents reserve capacity charge", resulting in a total settlement from defendant to Dakota Public Service Company of $20,447.50.

Item 579—shows generating station statistics including among other things the location and kind of plant, the year originally constructed, the year the last unit was installed, the total installed generating capacity (name plate ratings), the peak demand on each plant in kilowatts (60 minutes), the net generation and the production expenses including the fuel cost.

Item 581—shows changes made or scheduled in generating station capacities, including stations or units scheduled for or undergoing alterations or additions, and also new stations or units scheduled for or under construction.

Item 583—shows statistical information as to steam generating stations including boilers, prime movers and generators, showing as to each, among other things, the location, type or description, and the year of installation.

Item 585—shows statistical information as to internal combustion engine generating stations including both prime movers and generators, showing as to each, among other things, the location, description and year of installation.

Q. I show you book marked Defendant's Exhibit 55-9, and ask you if that document was a part of the group designated and offered in evidence as Exhibit 55?

A. Yes, it was, and it is the source from which I determined the new generating capacity on the Northwestern Public Service Co. system.

Q. In determining new capacity placed upon the system of the defendant company during the years 1937 to 1945, inclusive, you need nothing except Exhibit 55-9, do you?

A. I would not be sure about that. There might have been material added or removed in the intervening time.

Q. Where would you find anything that was removed from the defendant's system, other than in this, or what else? A. There is a number of them.

Q. Will you indicate what other records are necessary for you to determine and testify as to increased capacity on the defendant's system from 1937 to 1945, both inclusive?

A. To make an exhaustive study of it, we ought to have all of them.

Q. Get them. You are the man that testified to this stuff. I am asking you what you testified from.

Mr. Benson: How many books do you have there?

The Witness: Seven in addition to the two I previously brought out.

Defendant's Exhibits 55-10 to 55-17, both inclusive, were received in evidence and are copies of the verified Annual Reports filed by defendant with the Federal Power Commission for the years 1938, 1939, 1940, 1941, 1942, 1943, 1944 and 1937, respectively. They contain the same type of information for the respective years covered by each of the reports as that contained in Defendant's Exhibit 55-9 (R. p. 643, supra). Three of said reports also contain some correspondence between defendant and the Federal Power Commission, none of which pertains to any of the rates, charges or contracts involved in this case.

Q. I show you documents marked Defendant's Exhibits 55-10 to 55-17, both inclusive, and ask you if they in each instance are a part of the general exhibit, No. 55, heretofore offered and received in evidence? A. Yes, they are.

Q. And do each of these documents refer to Northwestern Public Service Co.? A. Yes.

Q. And are these all of the files that you used in de-

termining the increase of generation on the defendant system for the years 1937 to 1945, both inclusive?

A. Yes, I believe so.

Q. Now, will you indicate when the Redfield generation was increased as shown by those documents?

A. The book shows 1937.

Q. You didn't mention that, did you, in your examination? A. No, I didn't. I overlooked that. I am sorry.

Q. Did you mention on the system of the defendant the boiler at Aberdeen?

A. I understood the question referred to capacity.

Q. If that affected capacity should it have been mentioned?

A. My understanding of the term capacity, in the question, was as used in these contract.

Q. You did mention, didn't you, two boilers at Bismarck for the plaintiff company and its predecessor?

A. That is correct.

Q. And you mentioned the boiler at [Buelah] for the plaintiff and its predecessor? A. That is right.

Q. But you didn't mention the boiler at Aberdeen in 1943, did you? A. No, I didn't.

Q. Will you look at those exhibits, 55-10 to 55-17, and indicate whether or not boilers were placed in the Aberdeen property or plant of the defendant company in the years 1943 to 1945?

A. The books shows 1943, commissioned in 1945. My understanding was the 1945 boiler was not in operation at the time.

Q. Your understanding does not account for anything you are reading in that book, though, does it? A. No.

Q. Also in 1945 they installed 7500 KW's in Aberdeen, didn't they? A. That is correct, and that was in operation.

Q. There is nothing in that book that shows it was not in operation is there? A. I don't know.

Q. And you said that was what you were testifying from, didn't you? A. That is right.

Q. Can you tell from any record that you have in Exhibit 55, whether or not a thousand kilowatt of capacity was installed at Armour in the season of 1935, on the defendant's system.

A. I think that is correct. Slightly short of a thousand.

Q. Mr. Elvig, are you testifying largely from records and files of the interconnected companies, or have you an independent knowledge of transmission and power plant generation, etc.? A. A little of both, I would say.

Q. Do you know where Bowdle is? A. Yes.

Q. Ever been there?

A. Been through there on the train, I guess.

Q. What train? A. Milwaukee.

Q. Stop there? A. No.

Q. Ever been to Wishek? A. I don't believe so.

Q. Ever been at Ipswich?

A. I have gone through Ipswich.

Q. The train didn't stop there, did it?

A. No. I have driven there also.

Q. Did you ever examine the power plant and the transmission and that sort of thing? A. At Ipswich, no.

Q. You have testified concerning the transmission line from Bowdle to Ipswich? A. Yes.

Q. Can you find the documents upon which you based your testimony concerning the Bowdle to Ipswich line?

A. Yes.

Q. Will you produce them, please?

Mr. Benson: What have you just handed counsel?

The Witness: Work order files covering construction of 38,000 volt transmission line between Bowdle and Ipswich. I don't remember the number of it.

Q. And the records you just handed me concerning work orders and the work order file, they are a part of the general Exhibit 82, are they? A. Yes.

Defendant's Exhibit 82-19 was received in evidence. It consists of a folder containing miscellaneous documents, including carbon copies, detailed field reports and correspondence, pertaining to Work Order 653 and Work Order 654-R of Dakota Public Service Company. Defendant's Exhibits 82-20 and 82-21 were extracted from Defendant's Exhibit 82-19 and are hereinafter reproduced in part.

Q. I show you Defendant's Exhibit 82-19 consisting of numerous records and files and ask you if they are a part of the record, Exhibit 82, which has been offered and received in evidence? A. They are.

Defendant's Exhibit 82-20 was received in evidence and is Work Order No. 653 and final return sheet in connection therewith, and is in part as follows:

WORK ORDER

Dakota Public Service Co. Aberdeen, S.D. Company
Date [illegible] Station Bonilla-Ipswich Utility Electric

W. O. No. [illegible]
Budget Sched. No. [illegible]
Acct. No. [illegible]
Franchise Exp. Date [illegible]

Description To build a 33000 volt transmission line from a point 1 mile east of the Bonilla substation to Ipswich, South Dakota, distance of 28 miles. Normal pole 35' - 3 pole structures @ every mile; 3 pole structures at 1/2 mile; two transposition 2 pole structures; a 4 pole switch structure at Bonilla and Ipswich, S.D. Conductor to be 2/0 aluminum, with ACSR reds; 45 KV insulators; [illegible] conductor 4' below crossarms.

APR 15 1940
BUDGET & ANALYSIS DEPT.

Date Work To Be Started June 1, 1940
Date Work To Be Finished Aug. 31, 1940

Retirement
Sec [illegible] Work Order No. Gen 2
Inv [illegible]

Proposed Expenditures—Budget Schedule No. [illegible]
Previous Authorizations $ -
This Authorization $59,[illegible]

ESTIMATE OF COST OF WORK TO BE APPROVED	AMOUNT
1. [illegible] Purchased	37,[illegible].04
2. [illegible] To Be Used From Stock	2,827.71
3. [illegible] Material To Be Used	
4. [illegible] Equipment Cost of right of way	780.00
5. Labor	11,200.00
6. [illegible] expenses	2,600.00
7. [illegible]	55,[illegible].75
8. [illegible] Department Charge 7 %	2,[illegible].80
9. [illegible] Office Supervision 3 %	1,744.76
10. [illegible] On Idle Investment %	
11. [illegible] Cost of Work To Be Approved	58,[illegible].41
[illegible] WORK ORDERS	AMOUNT
[illegible] Transformers and Installation	
[illegible] Meters and Installation	
[illegible] Services	
[illegible] Short Extensions	
16. [illegible]	
17. [illegible]	
18. [illegible] Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Pool Investment @ $ Per KW	
21. TOTAL INVESTMENT	58,503.41
22. Less: Salvage To Be Used	—
23. Transferred Equipment	—
24. Contributions	—
25. Refundable Deposits	—
26. Permanent Work Orders	—
27.	—
28. Total	—
29. Total Cash Required for New Work to be Authorized	58,503.41

BENEFITS ACCRUING FROM NEW WORK	
Increased Gross Revenue Per Year	[illegible]
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	[illegible]
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	[illegible]
% Decreased Expense To Cost of New Work	[illegible]

ESTIMATED RETIREMENT CHARGE	AMOUNT
Original Cost of Property Removed	
(How Computed and Date Installed)	
Less: Transferred Equipment	
Original Cost of Property Retired	
Cost of Removing Property Retired	
TOTAL	
Salvage Mat.—Junk Value	—
Salvage Mat.—Ret. to Stock	—
	—
TOTAL SALVAGE MATERIAL	—
NET RETIREMENT CHARGE	

		DATE
Submitted By	[illegible]	DATES 4-10
Checked By	[illegible]	4-8-40
Checked By	E. L. Bayless	4-9-40
Checked By		
Approved	[illegible]	4-9-40
Approved	[illegible]	4-11-40
Approved	[illegible]	4/12/40
Approved		
Approved		
Approved		
Approved		
Approved MIDDLE WEST SERVICE CO.		
Authorized By	[illegible]	4/22/40

*Investment-Retirement-Maintenance-Operating-Suspense

(OVER) DFC Smf 4/23

3

8351

Part of Defendant's Exhibit 82-20.

653

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below)

ACCOUNT NUMBER	ITEMS	SIZE	QUANTITY	COST PER UNIT	AMOUNT
1146	1. Head braces sets of 2 ea. 60" sp. 30" drop		579	1.72	995.88
	2. Crossarms 4"x5"x10'		579	1.95	1129.05
	3. Pins 1 3/8" LHx3/4 x 7" x 9" top		1536	.97	1489.92
	4. Pins 1 3/8" LH x 3/4 x 2x9" top		572	.73	417.56
	5. Poles Class 4 - 30' WRC BT	30'	51	7.60	387.60
	6. " " 3 - 35' WRC BT	35'	572	10.72	6131.84
	7. " " 2 - 40' WRC BT	40'	83	13.39	1111.37
	8. " " 2 - 45' " BT	45'	21	16.18	339.78
	9. " " 2 - 50' " BT	50'	5	20.16	100.80
	9A. " " 2 - 55' " BT	55'	4	22.58	90.32
	10. Ridge irons #1144 or equiv.		572	1.64	938.08
	11. Structures 2 pole "F" Hughes or equiv.	#A301	37	20.00	740.00
	12. " 3 pole "P" " " "	#A302	26	53.00	1378.00
	13. " 2 pole "F" " " "	#A303	2	33.00	66.00
	14. " 4 pole sgs 10'x14" " "	#B323	2	225.00	450.00
	15. Conductor ACSR sl. with armor rods - tie wire	#2/0	87500#	.21	18375.00
	16. " neutral 1/4" Siemens-Martin steel	1/4"	157833#	.0153	2414.84
	17. Insulators 46 KV 1 3/8"		1979	1.09	2157.11
	17A. " 46 KV 1 3/8" silentype		129	1.40	180.60
	18. Suspension insulators 10" strings of 4 each	#601	24	10.50	252.00
	19. #6 copper strand - grounds		3500#	.14	490.00
	20. Lightning protection arc gaps		128	2.50	320.00
	21. Air break switches [illegible] 3 pole 45 KV		2	400.00	800.00
	Total Material				40755.75
	ENG 7%				2852.90
	23. Purchase cost of right of way easements				750.00
	Total				44358.65
	Labor PCE				6000.00
	Labor ACE				4500.00
	Miscellaneous expenses				700.00
	24. Contingencies Total Labor				11200.00
	Transportation expenses				750.00
	Engineering and estimating				750.00
	Legal services other than Co. (surveying)				750.00
	Purchasing easements				350.00
	25. Administrative and general expenses 3%				1744.76
	Total Cost				59903.41

TOTAL CASH REQUIRED — BY WORK — BY MONTHS		
MONTH		ESTIMATE
January	19	
February	19	
March	19	
April	19	
May	19	
June	19 30	20,000.00
July	19 [illegible]	20,000.00
August	19 [illegible]	19,903.41
September	19	
October	19	
November	19	
December	19	
TOTAL		59,903.41

Reason Why Work Should Be Done:

If "% Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

4

Part of Defendant's Exhibit 82-20.

653

Defendant's Exhibit 82-21 was received in evidence and is Work Order No. 654-R and final return sheet in connection therewith and related miscellaneous papers, and is in part as follows:

WORK ORDER

Retirement

W. O. No. 653 R
Budget Sched. No. 4
Acct. No. 1365 - 1146
Franchise Exp. Date

Dakota Public Service Co. Mobridge, S.D. Company
Date 3-26-40 Location Bowdle to Ipswich Utility Electric

Description

To retire the present 23000V 3 phase transmission line beginning 1 mile east of Bowdle substation and extending east to Ipswich South Dakota a distance of approximately 30 miles. Line #419. 29.5 miles actually retired. .5 mile remains in service becoming the Roscoe feeder distribution line due to the location of the new line.

RECORDED
APR 15 1940
BUDGET & ACCOUNTS DEPT.

Dftfy 82-21 Filed Feb 28 1945 Reg. U.S. Thurlow Deputy

Date Work To Be Started

Date Work To Be Finished

Retirement
See Work Order No. 653
Investment

Proposed Expenditures—Budget Schedule $
Previous Authorizations $
This Authorization $

ESTIMATED COST OF WORK TO BE APPROVED	AMOUNT
1. Material To Be Purchased	
2. Material To Be Used From Stock	
3. Salvage Material To Be Used	
4. Transferred Equipment	
5. Labor	
6.	
7. Total	
8. Stores Department Charge %	
9. General Office Supervision %	
10. Interest On Idle Investment %	
11. Total Cost of Work To Be Approved	
PERMANENT WORK ORDERS	AMOUNT
12. Transformers and Installation	
13. Meters and Installation	
14. Services	
15. Short Extensions	
16.	
17.	
18. Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Pool Investment @ $ Per KW	
21. TOTAL INVESTMENT	
22. Less: Salvage To Be Used	
23. Transferred Equipment	
24. Contributions	
25. Refundable Deposits	
26. Permanent Work Orders	
27.	
28. Total	
29. Total Cash Required for New Work to be Authorized	

Submitted By [signature] DATE 3-40
Checked By [signature] 3-8-40
Checked By [signature] 4-9-40
Checked By

BENEFITS ACCRUING FROM NEW WORK	AMOUNT
Increased Gross Revenue Per Year	
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	
% Decreased Expense To Cost of New Work	
ESTIMATED RETIREMENT CHARGE	AMOUNT
Original Cost of Property Removed	[redacted]
(How Computed and Date Installed)	
I.P.Sy. Conn. Instr. -Page 9)	
Less: Transferred Equipment	
Original Cost of Property Retired	[redacted]
Cost of Removing Property Retired	[redacted]
TOTAL	[redacted]
Salvage Mat.—Junk Value	
Salvage Mat.—Ret. to Stock	12,667.59
TOTAL SALVAGE MATERIAL	[redacted]
NET RETIREMENT CHARGE	[redacted]
Approved [signature]	4-9-40
Approved [signature]	4-10-40
Approved [signature]	4/10/40
Approved	
Approved	
Approved	
Approved	
Approved MIDDLE WEST SERVICE CO.	
Authorized BY [signature]	478.40

*Investment-Retirement-Maintenance-Operating-Suspense

(over) OK Ernst 4/10

5

Part of Defendant's Exhibit 82-21.

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below) Original Cost

ACCOUNT NUMBER	ITEMS	Dis-position	Quantity	Size-Unit Cost	Amount	COST PER UNIT	AMOUNT
1144	1. Crossarms 3½x4½x8' offset	OK	519	.50	259.50	2.35	1219.65
	1A. " " " " "	NG	100	mc	-	2.35	235.00
	2. Timbers 6"x6"x12'	OK	2	1.48	2.96	19.69	39.38
	3. Down guys single DM	OK	3	.94	2.82	4.56	13.68
	4. Down guys " PA	OK	85	.94	79.90	4.46	379.10
	5. " " double DM	OK	1	1.88	1.88	7.50	7.50
	6. OH Guys	OK	10	2.75	27.50	3.45	34.50
	7. Clamp on steel pins 1 3/8" LH	NG	1842	mc	-	1.05	1934.10
	8. Pins steel LH 1 3/8"	OK	21	.87	18.27	1.03	21.63
	9. Poles 30' BT	OK	360	7.60	2736.00	11.33	4078.80
	10. Poles 30' BT	NG	175	.25	43.75	11.33	1982.75
	11. Poles 35' BT	OK	60	10.72	643.20	16.25	975.00
	12. Poles 35' BT	NG	22	.25	5.50	16.25	357.50
	13. Poles 40' BT	OK	10	13.39	133.90	19.81	198.10
	14. Poles 40' BT	NG	5	.50	2.50	19.81	99.05
1145	15. Insulators 35KV 1 3/8"	OK	1863	.25	465.75	1.71	3185.73
	16. Suspension insulators 10" #601	OK	99	1.65	163.35	2.899	287.00
	17. Conductor copper 3#8 stranded	OK	647464	.113	7316.30	.2202	14257.07
	17A. " " " "	NG	71944	.05	359.70	.2202	1584.12
	18. Copper DH shoes 3#8	OK	6	mc	-	Included with wire	
	19. Copper running corner shoes 3#8	NG	24	.28	6.72	"	"
	Total cost of material				12269.80		30,889.66
	Add 10.3% Appraisal Overheads						3,181.63
							34,071.29

Note: N.D.P.R.Comm. appraisals lists 671 = crossarms whereas our actual inventory shows 629 crossarms total in this line. We believe our figure to be correct. The difference between the arms retired and 629 is accounted for on the portion of line not actually retired.

Retirement Cost - $3500.00

TOTAL CASH REQUIRED FOR NEW WORK — BY MONTHS	
MONTH	ESTIMATE
January 19	
February 19	
March 19	
April 19	
May 19	
June 19	
July 19	
August 19	
September 19	
October 19	
November 19	
December 19	
TOTAL	

Reason Why Work Should Be Done:

If "% Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

This transmission line is in bad condition. Some of the poles are becoming rotted. The grading and ground clearance is poor. The line is under insulated for use as a 35000 V line. The conductor is 3#8 copper stranded and is badly worn at the insulator ties.

657

Part of Defendant's Exhibit 82-21.

Q. As I understand it, you have sent your assistant to the hotel for the property subsidiary sheet which covers this project? A. Covers the transmission line.

Q. Will that be something you will have to have in order to further discuss this matter? A. I don't believe so.

Q. I show you Exhibit 82-20, and ask you if that shows the amount or the cost of the construction, Bowdle to Ipswich?

A. Are you speaking about a specific figure? There are a number of figures here.

Q. I asked you if that is the document from which you got the figure you gave as to cost of that work?

A. I think I qualified my reply to this particular question by giving two figures.

Q. What figures did you give?

A. One of approximately $55,000.00, and another something over $50,000.00, to cover the changes because there seemed to be accounting adjustments between the completion of the construction and shortly thereafter.

Q. Was there any retirement in connection with this work order No. 653, which has been marked Defendant's Exhibit 82-20?

A. I believe there was another line stricken out, yes.

Q. You know there was, don't you? A. From the record.

Q. Yes. That is all you know about this law suit, is from the records, isn't it? Now, you have handed me as part of this record from which you say you testified, a retirement voucher, 82-21. I want you to look at that. That is one of the papers you handed me, isn't it? A. Yes.

Q. Did you consider that when you told the Court this cost between $50,000.00 and $55,000.00?

A. My testimony was adequate.

Q. Did you mention this paper, Defendant's Exhibit 82-21? A. No sir.

Q. Now, isn't it a fact, that as shown by Exhibit 82-21, there was retired some $25,000.00 on this project, incident to the construction shown by Exhibit 82-20?

A. When the new line was built the old one was taken out, which is the custom.

Q. And the retirement was $25,601.79, wasn't it?

A. That is the estimated charge, I believe, when the authorization was approved.

Q. Your ledger will show, won't it, when it comes?

A. Usually it would, but this particular accounting is a little involved. My figure is not far wrong.

Q. You say it is not too far wrong? A. That is right.

Q. Can you tell us, as a matter of fact, whether or not when the transmission line runs down to Ipswich from Bowdle, that that is the end of the plaintiff's system at that point? A. Yes, I can tell that.

Q. It is the end of your line there, isn't it?

A. Yes, last of our line.

Q. It is the line by which the plaintiff company serves Ipswich, isn't it? A. Yes.

Q. In other words, you would have to have that line there if you were going to keep lights in Ipswich, wouldn't you? A. Either a transmission line or a power plant.

Q. Going back to Exhibits 82-19, 82-20, and 82-21, particularly 82-20 and 82-21, I observe that they have approval as work orders by a number of persons. Are you familiar with the signatures or initials?

A. I know Mr. Harrison's, Mr. Bayles', Mr. Buckmier's signatures, from long standing. I think I recognize Mr. Sandstedt's. I recognize Mr. Corbin's from examination of the files.

Q. Can you identify the initials of White?

A. I learned in Chicago that was Mr. White's initials.

Q. You would say then, from that knowledge, that is Mr. White's initials on that instrument?

A. I believe so, yes.

Q. Is that the signature of A. B. Sanborn? Does that strike any recognition? A. That is familiar also.

Q. In both of these instruments? A. Yes.

Q. We are now talking about the Wishek Bowdle line. I think you identified that as new construction sometime between 1936 and 1945, and gave the cost of that.

Q. Will you produce the records from which you got the information concerning that testimony?

Mr. Benson: What are you handing counsel?

The Witness: This contains work order 366, 367-R, and work order 370.

Q. You have reviewed that transmission line?

A. What do you mean by "reviewed"?
Q. Seen it? A. No, I don't believe I have.
Q. Then your testimony is a matter of records and based upon records? A. Yes.

Defendant's Exhibit 82-22 was received in evidence, consisting of Work Order 365 of Northern Power and Light Company and related papers. It is in part as follows:

[redacted] VE

JUN 12 1935

WORK ORDER

INVESTMENT

W.O. No. 366
Budget Sched. No. 23
Acct. No. 1122.1, 1123.1

[redacted] POWER & LIGHT Company
Date 5/13/35 Location BOWDLE Utility ELECTRIC

Description Build new 38 KV line from Bowdle to Wishek, using 2/0 ACSR and 35', class 3 poles with 240 foot spacing and storm guyed at each half mile.

Retirement
See Investment Work Order No. 367-R

Date Work To Be Started Augl 1, 1935
Date Work To Be Finished Nov. 1, 1935

ESTIMATED COST OF WORK TO BE APPROVED	Amount
Material To Be Purchased	62588.78
Material To Be Used From Stock	4000.00
[redacted] Right of Way	3000.00
[redacted] Incidentals	3379.44
Labor	14860.00
Total	88818.22
Stores Department Charge 10%	8061.16
General Office Supervision 1% 784.11	[redacted]
Interest On Idle Investment	978.79
Total Cost of Work To Be [redacted]	[redacted]
PERMANENT WORK ORDERS	Amount
Transformers and Installation	
Meters and Installation	
Services	
Short Extensions	
Total Permanent Work Orders	101 304 55
TOTAL COST OF NEW WORK	[redacted]
Less: Salvage To Be Used	
Transferred Equipment	
Contributions	
Refundable Deposits	
Permanent Work Orders	
Material in stock 4000.00	
TOTAL	4000.00
[redacted]	[redacted]
Submitted By [redacted]	5-13-35
Checked By [redacted]	5/17/35
Checked By [redacted]	5-18-35
Checked By [redacted]	5-16-35

RECEIVED
MAY 23 1935
BUDGET DEPT.

BENEFITS ACCRUING FROM NEW WORK	Amount
Increased Gross Revenue Per Year	
% Increased Gross Revenue To Company Cost	
Increased Net Revenue Per Year	
% Increased Net Revenue To Company Cost	
Decreased Expense Per Year	2000.00
% Decreased Expense To Company Cost	1.8%
ESTIMATED RETIREMENT CHARGE	Amount
Original Cost of Property Retired	
(How Computed)	
Cost of Removing Property Retired	
TOTAL	
Salvaged Mat.—Junk Value	——
Salvaged Mat.—Ret. to Stock	——
TOTAL SALVAGE MATERIAL ——	
NET RETIREMENT CHARGE	

		DATE
Approved	R. L. Walsh	5/18/35
Approved	[redacted]	5/18/35
Approved	[redacted]	5/23/35
Approved	[redacted]	MAY 27 35
Approved	[redacted]	JUN 8 1935
Approved	[redacted]	JUN 8 1935
Approved		
Approved		
Approved		
Approved		
Authorized	[redacted]	JUN 8 1935

*Investment Retirement Maintenance Summary

(Over) OK [redacted]

J

661

Defendant's Exhibit 82-22.

DETAILED ESTIMATE OF COST (Itemize Labor & Material Below)

Account Number	Items	Size	Quantity	Cost Per Unit	Amount
1183.1	1 [illegible] poles 1/2" penetration 35'	Class 3	1076	15.00	[illegible]
	2 " " " 40'	" 3	[illegible]	15.00	[illegible]
	3 " " " 45'	" 3	88	17.00	[illegible]
	4 " " " 50'	" 3	80	20.00	[illegible]
	5 " " " 55'	" 3	30	33.00	[illegible]
	6 10' Wash Pin arms	4x5	1154	1.85	[illegible]
	7 11' " " "	4x5	96	1.85	[illegible]
	8 12' " " "	4x5	288	1.85	[illegible]
	9 15' " " "	4x5	15	5.00	[illegible]
	10 60" Wood cross arm braces	60"	1154	1.20	[illegible]
	11 Pole bands	5"	18	1.00	[illegible]
	12 3/4x14" Thumbolts	14"	1154	.15	[illegible]
	13 5/8x10" "	10"	1744	.10	[illegible]
	14 1/2x8" Carriage bolts	1/2"	2308	.05	[illegible]
	15 1 3/8" Lead head steel pins	8"	2307	.60	[illegible]
	16 13/16" hole 3" washers	13/16"	3844	.015	[illegible]
	17 11/16" " 3" "	11/16"	844	.015	[illegible]
	18 5/8" Lockmits	5/8"	2344	.01	[illegible]
	19 3/4" "	3/4"	1154	.01	[illegible]
	20 1/2" "	1/2"	2848	.01	[illegible]
	21 Staple clamps	1/4"	1348	.30	[illegible]
	22 Copperweld staples	3"	30,000	.005	[illegible]
	23 3/8" Galv. guy strand.	3/8"	8000'	1.60 C	[illegible]
	24 Anchor rods 3/4x8'	3/4"	36	.75	[illegible]
	25 Anchor logs	8'	36	1.00	[illegible]
	26 Square washers 4"	13/16"	1036	12.00 C	[illegible]
	27 Thimbles	[illegible]	18	.05	[illegible]
	28 3 bolt heavy clamps	[illegible]	72	.35	[illegible]
	29 X Braces - sets	[illegible]	128	12.00	[illegible]
	30 X Braces	[illegible]	128	[illegible]	[illegible]
	31 3/4x16" Thumbolts	3/4	256	[illegible] C	[illegible]
	32 3/4x8" Eye bolts	3/4"	76	[illegible] C	[illegible]
	33 3/4" Eyelets	3/4"	56	.35	[illegible]
1183.1	34 3-Unit suspension strings complete	45 KV	37	7.00	[illegible]
	35 2/0 ACSR Staple clamps	2/0	155	2.25	[illegible]
	36 2/0 ACSR Conductor	2/0	[illegible] lb.	.14	[illegible]
	37 45 KV Insulators	5 3/8"	3307	2.25	[illegible]
	38 Sets of Anchor rods	2/0	4000	.35	[illegible]
	39 Anchor rod clamps	2/0	9150	.35	[illegible]
	40 3" .1368 Dia Wire	3"	37,000'	.005	[illegible]

TOTAL COST OF NEW WORK—BY MONTHS		
Month		Estimate
January	19	
February	19	
March	19	
April	19	
May	19	
June	19	
July	19	
August	19[illegible]	[illegible]
September	19[illegible]	[illegible]
October	19[illegible]	[illegible]
November	19	
December	19	
TOTAL		

Reason Why Work Should Be Done: The present line is on small 30' poles and is 3 number 8 copper strands. The lines served from this line have had much poor service during recent sleet storms that we will lose some of the farms if this line isnot rebuilt. The savings shown are estimated savings in maintenance

8

Defendant's Exhibit 82-22.

663

Defendant's Exhibit 82-23 was received in evidence, consisting of Work Order 367-R of Northern Power and Light Company and the final return sheet thereon.

S. W. Syst. 30 Rev.—6-31.

WORK ORDER

RETIREMENT

W.O. No. 367-R Sheet 1
Budget Sched. No. 23
Acct. No. 11281, 1128.1

[redacted] POWER & LIGHT Company
Date [redacted] Location BOWIE Utility ELECTRIC

Description: Retire 25 miles of line from Bowdle to Eureka, 28 miles from Mound City Junction to a point one mile west of Wishek and 2 miles of Stub line into the Venturia sub.

See Retirement / Investment Work Order No. 366

Date Work To Be Started Aug. 1, 1934
Date Work To Be Finished Sept. 1, 1934

ESTIMATED COST OF WORK TO BE APPROVED	Amount
Material To Be Purchased	
Material To Be Used From Stock	
Salvage Material To Be Used	
Transferred Equipment	
Labor	
Total	
Minor Investment Charge 10%	
General Office Supervision	
Interest On Life Investment	
Total Cost of Work To Be Approved	

RETIREMENT CREDITS	Amount
Transformers and Installation	
Meters and Installation	
Services	
Plant Extensions	
Total Retirement Work Orders	
TOTAL COST OF THIS WORK	
Less Salvage To Be Used	
Transferred Equipment	
Labor	
Material Disposals	
Retirement Work Orders	
Total	
Estimated by	E-B-B
Checked by	[illegible]
Checked by	[illegible]
Checked by	8-16-34

BENEFITS ACCRUING FROM NEW WORK	Amount
Increased Gross Revenue Per Year	
% Increased Gross Revenue To Company Cost	
Increased Net Revenue Per Year	
% Increased Net Revenue To Company Cost	
Decreased Expense Per Year	
% Decreased Expense To Company Cost	
ESTIMATED RETIREMENT CHARGE	Amount
Original Cost of Property Retired	15,780.05
(How Computed) Appraisal [illegible]	
Page 230 [illegible]	
Cost of Removing Property Retired	[illegible]
TOTAL	[illegible]
Salvaged Mat.—Junk Value	1,376.71
Salvaged Mat.—Ret. to Stock	—
TOTAL SALVAGE MATERIAL	[illegible]
NET RETIREMENT CHARGE	[illegible]
Approved R. E. Wabel	[illegible]
Approved [signature]	[illegible]
Approved [signature]	[illegible]
Approved [signature]	[illegible]
Approved [signature]	[illegible]
Approved [signature]	[illegible]
Approved [signature]	[illegible]
Approved	
Approved	
Approved	
Approved [signature]	

RECORDED
AUG 23 1934
BUDGET DEPT.

*Investment-Retirement-Maintenance-Suspense

(Over) [signature]

Defendant's Exhibit 82-23.

5

DETAILED ESTIMATE OF COST (Itemize Labor & Material Below)

Account Number	Items	Size	Quantity	Cost Per Unit	SALVAGE Amount
		REV.			
		DUE.			
		BAL.			
[illegible]	[illegible] Poles				
	[illegible]	1			
	[illegible]	2			
	[illegible]	3			
	[illegible]	4			
	[illegible]	5			
	[illegible]	6			
	[illegible]	7			
	[illegible]	8			
	[illegible] MA	9			
	[illegible]	10			
	[illegible]	11			
	[illegible]	12			
	[illegible]	13			
	[illegible]	14			
	[illegible]	15			
	[illegible] MA	16			
	[illegible]	17			
	[illegible]	18			
	[illegible]	19			
	[illegible]	20			
	[illegible]	21			
	[illegible]	22			
	[illegible]	23			
	[illegible]	24			
	[illegible]	25			
	[illegible]	26			
	[illegible]	27			
	[illegible]	28			
	[illegible]	29			
	[illegible]	30			
	[illegible]	31			
	[illegible]	32			
	[illegible]	33			
	[illegible]	34			
	[illegible]	35			
	[illegible]	36			

Reason Why Work Should Be Done:

1-AO
1-

10

Defendant's Exhibit 82-23.

DETAILED ESTIMATE OF COST (Itemize Labor & Material Below)

Account Number	Items	Size	Quantity	ORIGINAL Cost Per Unit	SALVAGE Amount
	Retire total amount of 23 miles from Bowdle to Eureka - Page 239 Appr.			28,300.16	
	Retire 30 miles of line on the Eureka to Wishek line Page 240 - Appr. @ 1189.44 per Mi.			35,683.20	
				63,983.36	
	20% - Appraisal Overhead			12,796.67	
36	1 Assmt. 4/0 x 5 x 12			76,780.03	23,376.71
37	- 3/8 x 4½ x 18 -				
38	Brace 28"				
39	Eyelets				
40	15 KV Insulators #601				
41	4 x 8 Steam plates				

TOTAL COST OF NEW WORK—BY MONTHS	
Month	Estimate
January 19	
February 19	
March 19	
April 19	
May 19	
June 19	
July 19	
August 19	
September 19	
October 19	
November 19	
December 19	
TOTAL	

Reason Why Work Should Be Done:

Defendant's Exhibit 82-23.

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Q. Will you produce the ledger sheets of the property accounts of these two transmissions?

Q. I show you Defendant's Exhibit 82-22 and 82-23. They are a part of general exhibit 82, are they not?

A. Yes, they are.

Q. Now, what do you say the cost of the Bowdle Wishek line was?

A. I don't recall. I had some notes when I testified.

Q. Will you refer to your notes? A. $111,873.01.

Q. And that is shown by Defendant's Exhibit 82-22, isn't it? A. Yes.

Q. Now, then, was there any retirement out of, or at the time of the construction of that transmission? A. Yes.

Q. And that is shown by Defendant's Exhibit 82-23, isn't it? A. Yes.

Q. And it shows a retirement of $55,071.56, in part, in addition thereto $75,517.00 plus. Isn't that right?

A. I would say this voucher indicated a retirement of $75,517.36 from the property account.

Q. And that is reflected in these ledger sheets. Your ledger sheets don't have this data back of the evidence of appraisal by the North Dakota Commission, following the installation of the transmission line?

A. I assume that is the reason, yes.

Q. Now, concerning the Bowdle to Ipswich line. Is the transaction concerning the Bowdle to Ipswich line reflected on ledger pages, Defendant's Exhibit 82-24?

A. Yes. This is the ledger sheet that I stated was confused. In and out. And it is not clear.

Q. It would appear then that prior to the construction of the new line, it was carried on the property ledger at $34,720.54? A. Yes.

Q. And after the completion of the construction and the retirement of the old line, it was carried on the property ledger as $50,851.11? A. Yes.

Q. Do you think you can identify the signatures of approval on the work order and the retirement, these exhibits 82-22 and 82-23? A. Yes, I can.

Q. Do you recognize them as being the signatures of the parties appearing there? A. Yes.

Q. Is that true also of the initials of S. W. White?

A. That looks like his initials.

Q. From your study of the system of the plaintiff, insofar as applied to Bowdle and Wishek, that is a part of the company transmission line, isn't it?

A. It is a part of the transmission system, yes.

Q. That line served for the Dakota Public Service Co., and now the plaintiff and the predecessor companies, the towns of Ashley, Ventura, Wetonka, Eureka, Hillsview, Hosmer, Greenway, Zeeland, Herreid, Mound City, Pollock, and Strandsburg, doesn't it? A. That is right.

Q. That system could hardly get along without that wire there, could they?

Mr. Benson: Do you mean the identical wire?

Q. Or another one like it?

A. A transmission line is required, yes.

Q. And it serves your towns, doesn't it?

A. Serves that market.

Q. You mentioned Bowdle substation. What did you say about that? Did you rebuild that?

A. Built a new one there, yes.

Q. You testified from certain records in your hands, a part of Exhibit 82. Will you produce them? Have you produced them? A. I have it here for you.

Q. Are you familiar with the line entering and leaving Bowdle? A. Just vaguely.

Q. There is a line runs into Bowdle from the north. That is this transmission line we are talking about?

A. The one we just referred to.

Q. There is a breaker on the north side of Bowdle, isn't there? A. Yes.

Q. That is to clear faults, isn't it?

A. That is the purpose of it, yes.

Q. Then there is a line going west from Bowdle? A. Yes.

Q. To Mobridge? A. That is right.

Q. And right out of or at Bowdle there is a breaker on the west line? A. That is right.

Q. That is true, east of Bowdle to Ipswich? There is a breaker on the east side of Bowdle?

A. These are all on the substation but they are on the lines going east and north and west.

Q. What do you understand by breaker?

A. A device for disconnecting transmission lines in case of trouble, or otherwise.

Q. It is one way you have of finding out where the trouble originates on the line?

A. I think it is primarily to protect the rest of the system.

Q. Eventually you corner whatever trouble is arising by confining it within the breakers?

A. As I understand it, they trace the trouble from there, yes.

Q. You had a breaker down south of Bowdle, too, didn't you? A. On the south line, yes.

Q. Where it goes down to Gettysburg? A. And beyond.

Q. I take it, to get energy to Gettysburg over the plaintiff's lines there, you have to go through Bowdle, don't they? A. Unless it comes from Huron.

Q. It doesn't come from Huron any more?

A. No, not now.

Q. Until October 19, 1945, Gettysburg was your own station, the plaintiff or its predecessor company?

A. That was our market.

Q. You served it? A. That is right.

Q. And you served it from the transformer, either at Gettysburg or from a little plant you had in Gettysburg. Is that right? A. That is right.

Q. That is, the defendant had no customers in Gettysburg? A. I don't think they had any.

Q. You had the franchise, didn't you? A. Yes.

Q. When I say "you" I mean the plaintiff and its predecessor. So that if energy was taken into Gettysburg from the north it would have to come through this Bowdle connection? A. That is correct.

Q. Important part of your system, wasn't it?

A. Important part only because of the interconnection. And these oil circuit breakers.

Q. I believe you served a number of towns between Bowdle and Gettysburg?

A. I believe there are four or five towns in there.

Q. Seneca, Lebanon, Hovey, Tolstoy, Wanetka? A. Yes.

Q. I show you Plaintiff's Exhibit 82-10, and ask you from what source you took those figures?

A. I think all of them came from the operating reports of the Northern Power & Light Co., North Dakota Power & Light Co., and Dakota Public Service Co., except we had

some trouble in 1932, when there was simplified accounting, at which time we went back to station sheets. I don't remember the title. Something that was included in the subpoena.

Q. Are those figures true and correct? A. Yes, they are.

Q. I am talking about 82-10. I call your attention to 82-9, Plaintiff's Exhibit, and ask you if those are true and correct? A. I believe they are, yes.

Q. I now call your attention to the fact that in 1931 you show an interchange from Northwestern Public Service Co. 84,600, in Exhibit 82-10, and in Exhibit 82-9 you show 1,051,060. What have you to say about that?

A. These two exhibits were prepared at different times. One of them considerably earlier than the other, and the first exhibit, that is Exhibit 82-10, shows a record as it was tabulated in the operating reports before I secured the individual vouchers. I believe at that time it was the practice to show on the operating reports the net transactions rather than the movement each way. This exhibit was made a long time ago for another purpose. I think they can be reconciled.

Q. Then one or the other of these isn't true and correct, is it?

A. I would say different method of presentation of the same information.

Q. What do you mean?

A. I stated before that the operating report showed the net transactions in some of the early periods rather than the movement both ways. When I made up the last mentioned exhibit I had the vouchers to follow through and got the gross movement both ways.

Q. On Exhibit 82-9 you have a column which says "Rental" from 1936 to 1945. There is a figure $20,000.00. Was that for the interconnection rental charge?

A. That is the item, yes.

Q. As a matter of fact it was not $20,000.00 for the year 1945, within the issues of this law suit, was it?

A. No, that is true.

Q. That includes the entire year of 1945? A. Yes.

Q. Is that true also of the reserve capacity charge?

A. May I see the figures? I believe it would be true of all of the figures.

Q. It is not cut off on October 19, 1945? A. No.

Q. It extends through the entire year of 1945? A. Yes.

Q. Now, you say here in the next column, which is the fourth column from the left of the sheet, "Energy Gross in Dollars." Is that the energy shown in the sixth column under the heading "N,W, received figured at 5 mills"?

A. Figured at 5 mills for the period the 5 mill price applied.

Q. Then from 1936 on, the kilowatt hours shown in Column 6, under the heading "Kilowatt Hours Received," multiplied by 5 mills equals the amount shown in the fourth column from the left headed, "Energy Gross in Dollars."

A. That is right.

Q. Do you have any exhibit here which shows what the plaintiff and its predecessors received from the defendant, in dollars?

A. I have made no such schedule that I can recall.

Q. You have no study showing what amount in dollars the plaintiff and its predecessor companies received from the defendant during the year 1936 to 1945, for energy?

A. I don't remember making one.

Q. Have you any study that has been presented to the Court here showing kilowatt hours that the plaintiff and its predecessors sold to the defendant?

A. I believe you have an exhibit in your possession.

Q. One of your exhibits? A. Yes.

Q. Referring to Exhibit 82-10, at the bottom gang of tabulations at the lower left hand corner of the page, under the column headed "Interchange to Northwestern", does that show the kilowatt hours that this plaintiff and its predecessors sold to Northwestern Public Service Co.?

A. Yes.

Q. And while the dollars are not figured out, do you know from the records that from and after 1936 to October 19, 1945, you collected 5 mills per kilowatt hour for each of those kilowatt hours? A. Yes.

Q. Did they?

A. The word "collected" is a little ambiguous, but we got credit for it, in off-sets, etc.

Q. It was paid? A. Yes.

Q. Then if I understand you correctly, in 1944, the plain-

tiff and its predecessors sold to the defendant, 10,883,300 kilowatt hours at 5 mills? A. Yes.

Q. And on the same line extended, Northwestern Public Service Co. sold to plaintiff and its predecessors, 1,428,900?

A. That was netted against the other in the transactions.

Q. That is right, isn't it? A. Yes.

Q. Now, the net was 9,454,400 kilowatt hours. Is that right? A. That is right, net to Northwestern.

Q. For which plaintiff and its predecessors collected 5 mills per kilowatt hour? A. That is right.

Q. Have you got a piece of paper? Will you compute what the plaintiff and its predecessors received at 5 mills for 9,454,400 kilowatt hours? A. $47,272.00.

Q. Now, if I understand you correctly, the plaintiff and its predecessors, as shown by your exhibit 82-9, that year paid $20,000.00 interconnection rentals? A. That is right.

Q. And $9,992.40 reserve capacity charge?

A. That is right.

Q. Making in all $29,992.40. Will you subtract that from the money you got for kilowatt hours? A. Yes.

Q. What is the difference? A. $17,279.60.

Q. That is, the plaintiff and its predecessors got that much more money out of the defendant company for that year's business. Is that right? On the energy?

A. The amount of $17,279.60, represents the excess of the interchange revenue over the rent charge and the demand charge. I believe that is right.

Q. It is the balance in the handling of the three rates and charges involved in this litigation for that period of time, isn't it? A. That is right.

Q. Now, in 1944, from your records and files, the plaintiff's predecessors owned Knife River Coal Mining Co., didn't they? A. No.

Q. Knife River Coal Mining Co.? A. No, they didn't.

Q. A common owner owned the Dakota Public Service Co. and the Knife River Coal Mining Co. didn't they?

A. Yes.

Q. And that was the Public Utilities Corporation?

A. United Public Utilities Corporation.

Q. In the year 1944, which was used as a test year here, and as shown by Exhibit 82-9, you have submitted to the

Court a study in which, as I understand, you contend that you paid 25.99 mills for 1,428,900 kilowatt hours, per kilowatt hour. Is that right?

A. That is the unit cost per kilowatt hour.

Q. And you arrived at that by adding the rental charge of $20,000.00, the reserve capacity charge of 9,992.40, and then dividing that amount of dollars by the kilowatt hours? A. You have left out one figure, I think.

Q. In addition to that you add up 5 mills for 1,428,900 kilowatt hours? A. I have three figures there.

Q. You add all of those dollars and you get a claimed investment of $37,136.90? Is that right? As shown by your exhibit? A. Claimed cost of power, yes.

Q. You add up all of those figures I spoke about and you get that total? A. That is right.

Q. Then you say we only got 1,428,900 kilowatt hours?

A. That is right.

Q. And because we spent $37,196.90, and only got that many kilowatt hours, that we paid 25.99 mills per kilowatt hour?

A. The kilowatt hours are divided into the dollars.

Q. Did you forget to tell the Court you had the use of these interconnecting facilities, too?

A. I didn't forget to tell the Court anything.

Q. Do you mean to tell the Court by this exhibit that you got no value of the reserve capacity charge?

A. I think that is probably correct.

Q. Do you know?

A. That is what we are litigating about.

Q. (Read) Do you mean to tell the Court by this exhibit that you got no value of the reserve capacity charge?

The Court: You can answer that question yes or no.

A. The way it is phrased I guess I better say no.

Q. What does it mean when you apply that all to the cost of your kilowatt hours? A. Now I don't understand.

Q. You can't answer that question?

A. I don't understand what you mean.

Q. Do you mean by this exhibit that you did get some value out of the reserve capacity agreement between the plaintiff's predecessor and the defendant?

...SERVICE COMPANY

Company

DEC 1944

SUMMARY OF ELECTRIC OPERATION

Line No.	all	CURRENT MONTH				12 MONTHS TO DATE			
		THIS YEAR		LAST YEAR		THIS YEAR		LAST YEAR	
1	K.W.H. Generated	1 [illegible]	9[illegible]6	4 [illegible]	8[illegible]0	72 [illegible]	9[illegible]	91 [illegible]	9[illegible]
2	K.W.H. Station Use	[illegible]	[illegible]	[illegible]	[illegible]	8 [illegible]	2[illegible]	2 [illegible]	1[illegible]
3	K.W.H. Net Generated	5 [illegible]	8[illegible]	5 [illegible]	[illegible]	65 [illegible]	6[illegible]	6 [illegible]	8[illegible]
4	K.W.H. Purchased and Interchanged	[illegible]	[illegible]	[illegible]	[illegible]	1 [illegible]	[illegible]	1 [illegible]	[illegible]
5	K.W.H. Total Output	4 [illegible]	[illegible]	5 [illegible]	[illegible]	66 [illegible]	[illegible]	6[illegible]	[illegible]
6	K.W.H. Supplied Gas Dept.								
7	K.W.H. Supplied Ice Dept.								
8	K.W.H. Supplied Water Dept.								
9	K.W.H. Supplied Railway Dept.								
10	K.W.H. Supplied Company Lighting								
11	K.W.H. Supplied Miscellaneous								
12	Total K.W.H. Supplied [illegible]	22 [illegible]		31 [illegible]		[illegible]		[illegible]	
13	K.W.H. Delivered to Transmission System	4 [illegible]	[illegible]	5 [illegible]	[illegible]	66 [illegible]	[illegible]	6[illegible]	[illegible]
14	K.W.H. Delivered to [illegible] K.W.H. [illegible]	3 [illegible]	[illegible]	3 [illegible]	[illegible]	40 [illegible]	[illegible]	3[illegible]	[illegible]
15	K.W.H. Delivered to [illegible] K.W.H. [illegible]	[illegible]	[illegible]	1 [illegible]	[illegible]	10 [illegible]	[illegible]	11 [illegible]	[illegible]
16	K.W.H. Delivered to Distribution System	4 [illegible]	[illegible]	4 [illegible]	[illegible]	5 [illegible]	[illegible]	4 [illegible]	[illegible]
17	K.W.H. Loss—Distribution	1 [illegible]	[illegible]	1 [illegible]	[illegible]	14 [illegible]	[illegible]	14 [illegible]	[illegible]
18	% Distribution Loss								
19	% Total Loss	17 [illegible] 13	24	88	24	96	22	14	22	72
20	EXPENSES								
21	Steam Generation Expenses—Labor								
22	—Fuel								
23	—Other Operation*								
24	—Maintenance								
25	—Rents								
26	—Steam Transf'd (Cr. or Dr.)								
27	Total Steam Generation Expenses								
28	Per K.W.H. Net Generated								
29	Hydro Generation Expenses—Labor								
30	—Water for Power								
31	—Other Operation*								
32	—Maintenance								
33	—Rents								
34	Total Hydro Generation Expenses								
35	Per K.W.H. Net Generated								
36	Int. Comb. Generation Expenses—Labor								
37	—Fuel								
38	—Other Operation*								
39	—Maintenance								
40	—Rents								
41	Total Internal Comb. Generation Expenses								
42	Per K.W.H. Net Generated								
43	Purchased Power Cost								
44	Per K.W.H. Purchased								
45	Interchange Power Cost or Credit								
46	Per K.W.H. Interchanged								
47	Total Production Charges								
48	Power Cost per K.W.H. Total Output								
49	Transmission Expenses—Operation								
50	—Maintenance								
51	Total Transmission Expenses								
52	Distribution Expenses—Operation								
53	—Maintenance								
54	Total Distribution Expenses								
55	Total All Other Expenses								
56	Total Cost of Electricity Supplied Other Depts.								
57	Gas								
58	Water								
59	Ice								
60									
61	Total								
62	Total Miscellaneous Expenses								
63	Cost Per K.W.H. Supplied Other Depts.					XXX		XXX	

*Include Amt. Expense—Dr.

Do not type

Part of Defendant's Exhibit 82-25.

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DAKOTA PUBLIC SERVICE COMPANY — DEC 1944

SUMMARY OF KWH GENERATED, STATION USE, NET OUTPUT

	KWH GENERATED	STATION USE	NET KWH — OUTPUT	KWH GENERATED	STATION USE	NET KWH — OUTPUT
	CURRENT MONTH THIS YEAR			CURRENT MONTH LAST YEAR		
STEAM GENERATION						
Beulah	4 141 200	441 400	3 734 800	4 448 300	389 000	3 459 300
Hazen	1 971 000	271 816	1 743 184	1 939 300	188 928	1 650 372
Stanton	-0-	6 450	6 450	-0-	6 982	6 982
Watrous	-0-	-0-	-0-	-0-	-0-	-0-
Glendale	-0-	4 280	4 280	-0-	4 405	4 405
Sheridan	366 400	25 200	341 200	423 600	24 600	399 000
Total Steam	6 618 600	757 146	5 861 454	6 911 600	664 015	5 647 585
INTERNAL COMBUSTION GENERATION						
Mott	-0-	-0-	-0-		90	10
Dickinson	47 860	13 691	34 169	12 460	10 698	1 762
Guttenberg	4 271	896	3 375	-0-	100	100
Lemmon	3 815	706	3 109	-0-	134	134
Total Int Comb	55 946	15 293	40 653	12 260	932	11 328
Total All Generation	6 674 546	772 439	5 902 107	6 923 860	664 947	5 658 913
	12 MONTHS TO DATE THIS YEAR			12 MONTHS TO DATE LAST YEAR		
STEAM GENERATION						
Beulah	44 852 700	4 463 400	39 389 300	45 542 300	4 295 900	41 246 400
Hazen	23 134 900	3 011 440	20 123 460	21 192 100	2 707 040	18 485 060
Stanton	-0-	6 944	6 944		65 928	64 628
Watrous	12 000	-0-	12 000	5 490	-0-	5 490
Glendale	2 [illegible]	46 [illegible]	45 [illegible]	1 360	44 350	43 990
Sheridan	5 [illegible]	[illegible]	[illegible]	4 434	8 700	3 725
Total Steam	[illegible]	[illegible]	65 [illegible]	71 127 290	7 963 318	63 219 972
INTERNAL COMBUSTION GENERATION						
Mott	4 495	496	3 996	5 900	2 600	3 300
Dickinson	502 850	104 284	398 566	397 730	104 204	293 526
Guttenberg	8 350	712	8 340	9 746	8 240	1 506
Lemmon	10 [illegible]	1 [illegible]	9 [illegible]	7 820	1 524	6 296
Total Int Comb	611 [illegible]	122 [illegible]	488 [illegible]	250 250	102 868	141 382
Total All Generation	[illegible]	[illegible]	45 [illegible]	71 421 040	8 072 110	63 355 860

Part of Defendant's Exhibit 82 25

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A. Oh, it is possible there was value both ways.

Q. How much?

A. I don't know. I don't know if there is any.

Q. Do you mean to tell the Court that plaintiff and its predecessor companies got no value out of the rental charge for interconnecting facilities, by this Exhibit 82-9?

A. The interconnection facilities are both an asset and liability, depending on conditions.

Q. Well, is it an asset to the defendant?

A. It can be either way.

Q. Have you got some data to show how much of an asset it is to the defendant?

A. I don't think it can be computed.

Q. At least you can't compute it. Is that right?

A. I would not attempt to.

Q. Is that true of the reserve capacity?

A. I would not try to compute it, no.

Q. I notice in the third column of Exhibit 82-9, the heading in there which is "Reserve Capacity." You made this exhibit, didn't you? A. Yes.

Q. What do you mean by reserve capacity?

A. I just took the common word that has been used in the contracts so it would be easily identified.

Q. (Read) What do you mean by reserve capacity?

A. In that column I have inserted the figures which were the amounts which the Dakota company and its predecessors have all of the time referred to in the contract as reserve capacity.

Q. That is a matter of bookkeeping then with you?

A. That is right.

Q. Don't I understand that you claim to be an electrical engineer and very skilled in that profession?

A. I made no such representation.

Q. Do you know what reserve capacity means?

A. I think I know how it has been used in connection with this contract.

Q. I am not asking you that. I am asking you if you know what reserve capacity means or is in the utility business?

A. My only experience with it is in connection with this contract.

Q. Then you don't know what you do mean. Is that right? A. I explained why I used that term before.

Q. Now, in one of your exhibits, 82-13—I show you Plaintiff's Exhibit 82-13. Do I understand that that first column to the left is entitled "year"? A. That is right.

Q. And the next column to the right is entitled "Net KWH generation"? A. Yes.

Q. Where do you get the figures in that column?

A. They are a combination of figures found in the operating reports.

Q. For those years. You would not have operating reports of course, for the year 1930 to 1936, inclusive, would you? A. Yes.

Q. You would not have the FPC reports?

A. I am not talking about FPC reports, I am talking about operating reports.

Q. You have those from 1930 to 1945, inclusive?

A. They are here.

Q. Do the figures in there represent all of the kilowatt hours generated by Bismarck, [Buelah] and Mobridge for the years shown?

A. The net kilowatt hours generated by those stations, I believe.

Q. What do you mean by net kilowatt hours?

A. After the station requirements have been deducted.

Q. That is just for station use? A. Yes.

Q. Is this exhibit intended to show what the fuel cost is per kilowatt hour, over those three stations?

A. The exhibit shows the information, yes.

Q. That is the purpose of the exhibit, is it, is to show fuel cost?

A. I didn't state the purpose of the exhibit.

Q. What do you mean up there in the right hand column that is filled with figures, headed "average fuel cost per KWH"? A. The exhibit shows that information, yes.

Q. That is what I am talking about. That is what you intended it to do, isn't it? A. Yes.

Q. Now, the defendant could not buy any energy from the plaintiff predecessors or from the plaintiff during the times that it was in control, except and unless it was out on a transmission line, could it?

A. I don't think that is a proper or intelligent question.

Q. You can't answer that one?

A. Do you mean you could not buy electricity unless it was on the line?

Q. On the transmission line?

A. Unless the energy was on the transmission line?

Q. Yes?

A. Maybe you ought to talk to Mr. Sickel. If you rephrase that for me.

Q. Alright. In Bismarck you have included in the [columan] "net kilowatt hours" generated, all of the generation of that Bismarck station, have you not?

A. That is right.

Q. Except what was used in the plant itself? A. Yes.

Q. Alright. Isn't it a fact, or do you know it is a fact, that most of the Bismarck generation is used in Bismarck?

A. I would not make any such statement.

Q. You don't know?

A. You are covering a long period of years here.

Q. I am talking about the years you show in this exhibit, 82-13. A. That is what I mean, too.

Q. Do you know whether or not at Bismarck, there is a meter where every kilowatt hour that goes on on the transmission line is metered?

A. I know of only one, on the east line, for a certainty.

Q. Would you say there wasn't any other meter there?

A. No. I don't know.

Q. You just don't know. Anyway, you have tried to restrict this study, Exhibit 82-13, to energy that actually got out on the transmission line, have you? A. No.

Q. Now, come back to my question. The defendant could not buy that energy up there [unles] it was energy that was on a transmission line, could they?

A. Now, I can't answer that question. There isn't any answer to the question.

Q. Where is the material from which you prepared Exhibit 82-13? What material did you use in preparing that exhibit? A. Operating reports.

Q. Is that all? A. I believe so.

Q. And for the years shown? A. Yes.

Q. Do they break down the fuel costs between the three plants mentioned, [Buelah], Bismarck and Mobridge?

A. Yes.

Q. From the information then, upon which you base this Exhibit 82-13, you can tell us what the fuel cost was at Buelah, can you? A. The book will show, yes.

Q. Have you any computation about that?

A. I don't have one with me, but I think I have one.

Q. Well, it is a low cost unit, isn't it?

A. When you say unit, you are speaking of the generating station?

Q. The station, yes? A. [Buelah] has the lowest cost, yes.

Q. Next comes Bismarck?

A. That depends on what year you are talking about.

Q. After 1940?

A. I think that is probably correct after 1940.

Q. And then comes Mobridge. Is that right?

A. After 1940, I am not just sure of those figures, but I believe that is correct.

Q. Have you anything that will show how much generation from Bismarck and Mobridge got out on the transmission lines?

A. No, I don't believe there is any such record.

Q. Well, if you have a fuel cost in 1944 of 3.12 mills for [Buelah], Bismarck and Mobridge combined, it would be less than that for [Buelah] alone, wouldn't it?

A. Probably was.

Q. Have you any way whereby you can determine what part of the net kilowatt hours generated on those three stations was placed on the transmission line by [Buelah] station? A. No, I don't believe so.

Q. Have you any records here from which that can be computed? A. No, I don't think so.

Mr. Benson: Do you mean by this witness?

Mr. Royhl: Yes.

The Witness: No, I can't compute it.

Q. Do you mean you don't know how?

A. I don't think there are records to show that.

Q. In making up this exhibit—Did you make any exhibit to show how much energy was put on the line by the [Buelah] station?

A. We have no separation from the [Buelah] market and transmission lines.

Q. I show you Plaintiff's Exhibit 82-12 which I believe you said you prepared. Is that correct? A. Yes.

Ms. 98, Stand 210—Rev. 1-41

DAKOTA PUBLIC SERVICE COMPANY — Company

DEC 1944 — Page No. 7

Plant — ELECTRIC GENERATION EXPENSES—STEAM

Line No.		CURRENT MONTH		12 MONTHS TO DATE	
		THIS YEAR	LAST YEAR	THIS YEAR	LAST YEAR
1	K.W.H. Generated	6,618,610	6,211,600	73,012,840	71,177,200
2	K.W.H. Station Use	751,806	606,015	8,346,896	7,958,918
3	K.W.H. Net Output	5,866,794	5,605,585	64,769,944	63,218,282
4	Max. K.W. Hour Generation				
5	Max. K.W. 30 Min. Peak				
6	Power Factor thru Maximum Hour				
7	Hours Operated				
8	Station Load Factor—Capacity Factor				
9	Station Serviceability Factor				
10	Steam Pressure Main Unit				
11	Superheat Main Unit				
12	Feed Water Temperature to Boilers				
13	Absolute Exhaust Pressure Main Unit				
14	Total Water Evaporated				
15	Make Up Water (Total)				
16	Average Number Plant Employees				
17	Coal Used in Tons	15,870	15,229	156,988	157,285
18	Gas Used in M. Cu. Ft.				
19	Oil Used in Pounds				
20	Cost per Ton Coal in Boilers	1.90	1.81	1.83	1.72
21	Cost per M. Cu. Ft. Gas				
22	Cost per Gal. Oil in Tanks				
23	Total Equivalent Principal Fuel				
24	B.T.U. per Unit as Fired				
25	Boiler Efficiency				
26	Steam per K.W.H. Output				
27	Fuel per K.W.H. Output				
28	B.T.U. per K.W.H. Output				
29	OPERATING EXPENSES				
30	Supervision and Engineering	477.09	752.51	9,465.49	8,504.65
31	Boiler Labor	4,580.98	4,215.53	51,766.21	47,815.27
32	Prime Mover and Generator Labor	1,556.90	1,216.38	15,207.53	14,488.42
33	Electrical Labor	1,097.70	952.13	12,466.47	11,396.22
34	Miscellaneous Station Labor	637.65	621.22	5,841.60	6,566.59
35	Fuel	28,951.98	27,660.33	386,641.60	374,674.38
36	Water	1,711.13	1,609.47	16,939.51	15,804.87
37	Lubricants	40.23	45.58	916.15	692.96
38	Station Supplies	536.24	459.06	4,691.80	4,948.24
39	Station Expense	367.61	526.10	4,344.76	4,912.65
40	TOTAL OPERATING EXPENSES	39,959.51	38,124.91	469,792.67	449,520.15
41	MAINTENANCE				
42	Supervision and Engineering	200.18	232.38	3,729.31	3,663.99
43	Structures and Improvements	48.40	441.93	4,208.42	2,923.16
44	Coal Storage, Handling and Weighing Equipment	937.74	922.29	8,671.59	4,471.03
45	Furnaces and Setting	69.78	94.65	5,062.99	4,449.34
46	Boiler Apparatus	3,585.29	644.50	18,345.41	11,922.19
47	Steam Piping and Accessories	244.93	113.66	1,376.53	946.10
48	Prime Movers and Generators	19.89	321.21	8,138.99	2,766.28
49	Accessory Electric Equipment	38.25	252.94	373.30	642.23
50	Miscellaneous Power Plant Equipment	56.78	91.50	187.60	299.98
51	TOTAL MAINTENANCE	4,400.24	3,963.50	43,093.44	32,284.74
52	RENTS	15.00		1,588.75	1,454.75
53					
54	TOTAL GENERATION EXPENSES	44,069.15	42,088.41	463,676.86	423,697.34
55	Steam Transferred (Cr. or Dr.)	11,749.38	9,631.17	78,765.49	38,792.16
56	Joint Expenses—Cr.				
57	TOTAL COST OF POWER GENERATED	32,319.77	32,457.24	374,911.37	349,905.18
58	Power Cost Per Net K.W.H. Generation	.005 609	.005 793	.005 785	.005 533

Printed in U. S. A.

Part of Defendant's Exhibit 82-25.

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Q. From the records and files that are included in Exhibit 82? A. That is correct.

Q. Now, will you produce the records and files that show the figure contained in the columns which are headed (1) and (2)? A. They are in the operating reports.

Q. Will you produce those?

Defendant's Exhibit 82-25 was received in evidence. It consists of the monthly operating reports of Dakota Public Service Company for the year 1944. As a sample of the information and data contained therein the report for the month of December, which consists of 39 pages, is summarized and in part reproduced as follows:

Pages 1 and 2 show the revenues and consumption for electric customers and in detail under that heading the total kilowatt-hours sold; the total electric operating revenue; the total electric customers; the total KWH per customer; the total revenue per customer; and the total revenue per KWH. They state such figures for the current month and cumulatively for the year 1944, and also in each case comparative figures for 1943.

Pages 3, 3a, 4 and 5 are as follows:

DAKOTA PUBLIC SERVICE COMPANY — Company

DEC 1944 — Page No. 50

SUMMARY OF ELECTRIC OPERATION

Line No.		CURRENT MONTH — THIS YEAR	CURRENT MONTH — LAST YEAR	12 MONTHS TO DATE — THIS YEAR	12 MONTHS TO DATE — LAST YEAR
1	K.W.H. Generated	6 689 946	6 923 460	79 [illegible]	71 428 040
2	K.W.H. Station Use	765 529	674 727	8 930 271	8 092 111
3	K.W.H. Net Generated	5 924 937	5 [illegible] 495	65 [illegible] 463	63 335 [illegible] 260
4	K.W.H. Purchased and Interchanged	629 070	832 890	9 457 406	10 301 160
5	K.W.H. Total Output	5 995 467	4 776 249	55 739 453	53 034 700
6	K.W.H. Supplied Gas Dept.				
7	K.W.H. Supplied Ice Dept.				
8	K.W.H. Supplied Water Dept.				
9	K.W.H. Supplied Railway Dept.				
10	K.W.H. Supplied Company Lighting	17 785	16 642	196 162	220 484
11	K.W.H. Supplied Free Light	4 692	5 024	47 098	50 966
12	Total K.W.H. Supplied	22 397	21 666	243 258	271 450
13	K.W.H. Delivered to Transmission System	5 972 870	4 754 579	55 496 001	52 763 250
14	K.W.H. Loss—Transmission				
15	% Loss—Transmission Loss [illegible] K.W.H. Loss	3 749 900	3 357 796	40 799 512	38 450 296
16	K.W.H. Delivered to Distribution System				
17	K.W.H. Loss—Distribution [illegible] Total	1 523 570	1 396 781	14 696 719	14 622 954
18	% Distribution Loss				
19	% Total Loss	24 88	24 26	22 14	22 72
20	EXPENSES				
21	Steam Generation Expenses—Labor	8 252 32	7 261 27	94 949 35	87 127 75
22	—Fuel	28 951 98	27 660 93	286 641 60	274 634 38
23	—Other Operation*	2 955 21	2 [illegible] 31	26 201 92	25 [illegible] 22
24	—Maintenance	4 492 64	2 963 50	43 [illegible] 44	35 951 72
25	—Rents	15 00		1 [illegible] 75	2 154 25
26	—Steam Transf'd (Dr. or Cr.)	11 949 38	9 621 17	78 [illegible] 49	78 294 45
27	Total Steam Generation Expenses	32 317 77	31 467 24	294 870 89	276 [illegible] 19
28	Per K.W.H. Net Generated	005 569	005 522	005 783	005 227
29	Hydro Generation Expenses—Labor				
30	—Water for Power				
31	—Other Operation*				
32	—Maintenance				
33	—Rents				
34	Total Hydro Generation Expenses				
35	Per K.W.H. Net Generated				
36	Int. Comb. Generation Expenses—Labor	272 83	190 51	2 823 76	2 324 69
37	—Fuel	459 95	29 87	4 823 54	1 719 96
38	—Other Operation*	137 29	35 66	1 [illegible] 93	1 [illegible] 11
39	—Maintenance	852 79	169 71	3 [illegible] 43	919 34
40	—Rents			160 25	160 25
41	Total Internal Comb. Generation Expenses	1 722 25	509 25	12 [illegible] 91	6 [illegible] 85
42	Per K.W.H. Net Generated	821 [illegible]	329 [illegible]	025 478	044 [illegible]
43	Purchased Power Cost				
44	Per K.W.H. Purchased				
45	Interchange Power Cost or Credit	2 312 65	3 [illegible] 95	37 279 60	42 991 80
46	Per K.W.H. Interchanged				
47	Total Production Expenses	37 227 37	37 922 04	349 914 68	327 252 34
48	Power Cost per K.W.H. Total Output [illegible]	[illegible] 197	[illegible] 230	[illegible] 278	[illegible] 185
49	Transmission Expenses—Operation	3 002 53	2 [illegible] 64	32 197 84	32 454 56
50	—Maintenance	458 69	641 03	4 871 00	3 [illegible] 04
51	Total Transmission Expenses	3 461 22	3 [illegible] 22	37 068 84	35 [illegible] 60
52	Distribution Expenses—Operation	2 221 61	1 [illegible] 55	24 878 96	22 [illegible] 17
53	—Maintenance	3 565 05	2 [illegible] 00	27 [illegible] 43	25 [illegible] 19
54	Total Distribution Expenses	5 786 66	4 [illegible] 35	52 [illegible] 39	48 [illegible] 36
55	Total All Above Expenses	46 475 25	45 [illegible] 51	489 [illegible] 91	451 [illegible] 30
56	Less-Cost of Electricity Supplied Other Depts.				
57	Gas				
58	Water				
59	Ice				
60					
61	Total	- -	- -		- -
62	Total Departmental Expenses	46 475 25	45 [illegible] 51	489 [illegible] 91	[illegible] 30
63	Rate Per K.W.H. Supplied Other Depts.	- -	- -	XXX	XXX

*Includes Joint Expense—Dr.

Part of Defendant's Exhibit 82-25.

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M. W. Stand. 217—1-38-37

BAKOTA PUBLIC SERVICE COMPANY

Company

DEC 1944

Page No. 4

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ANALYSIS OF ENERGY PURCHASED AND SOLD

	Name of Company Purchased From	CURRENT MONTH THIS YEAR	CURRENT MONTH LAST YEAR	FISCAL YEAR TO DATE THIS YEAR	FISCAL YEAR TO DATE LAST YEAR
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
KWH					
Cost					
	Name of Company with Which Interchanged				
KWH	Energy - Interchange	850 100	1 002 000	10 835 200	11 621 100
Amount	Northwestern Pub Ser Co	$ 850 50	$ 910 00	$ 54 446 50	$ 53 105 50
KWH	Energy Purchased from	224 830	129 110	1 458 910	1 817 940
Amount	Northwestern Pub Ser Co	1 105 15	645 55	9 141 50	5 109 90
KWH	Total Energy to	629 070	732 870	9 [illegible]	10 803 160
Amount	Pur & Sold	$ 1456 35	$ 1 [illegible]	$ [illegible]	$ 57 [illegible]
KWH	Firm Capacity Charges for				
Amount	Northwestern Public Service Co	$ 22 70	2 [illegible]	7 [illegible]	$ [illegible]
KWH	Total Interchange	629 070	873 870	9 [illegible]	10 803 160
Revenue		$ 2 312 65	$ 1 [illegible]	$ [illegible]	$ [illegible]
KWH					
Revenue					
KWH					
Revenue					
KWH					
Revenue					
KWH					
Revenue					
KWH					
Revenue					
KWH					
Revenue					

INTERSTATE TRANSACTIONS—KWH	CURRENT MONTH THIS YEAR	CURRENT MONTH LAST YEAR	FISCAL YEAR TO DATE THIS YEAR	FISCAL YEAR TO DATE LAST YEAR
State of North Dakota				
Delivered out of State @	1 536 979	1 [illegible]	19 [illegible]	[illegible]
Received From out of State				
State of				
Delivered out of State				
Received From out of State				
State of				
Delivered out of State				
Received From out of State				

(Printed in U. S. A.)

Part of Defendant's Exhibit 89-95

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Page 6 sets forth the figures for the company showing heating earnings and expenses, for the current month and cumulatively, and also comparatively with 1943.

Page 7 is as follows:

							DEC 1944	
	262.1, 262.2		262.31, 262.32		262.4	262.5	TOTAL 262	2114
	8.86		101.05	[illegible]	1.18	147.02	1,287.63	957.83
	1.41		188.23	432.44	—	23.39	346.94	461.34
	—	2.64	59.21	[illegible]	1.95	141.27	1,688.91	1803.57
	12.49	1.64	233.63	[illegible]	3.13	312.16	3,523.48	3,229.74
			[illegible]					
	16.26	—	934.39	[illegible]	26.10	1052.38	12,224.94	12,418.05
	24.12	—	1686.07	[illegible]	42.24	556.35	8421.90	7,645.44
	64.20	15.27	2129.24	[illegible]	41.34	1344.19	14,911.67	14,982.95
	24.46	15.27	2823.82	[illegible]	106.92	1734.19	36,[illegible]5.67	35,056.46

Pages 8 through 13 set forth the same type of information as that set forth on page 7 but with respect to individual steam generating plants, being Beulah, Bismarck, Mandan, Dickinson, Ellendale and Mobridge, respectively.

Pages 14 through 18 set forth the same type of information as that included on page 7, but with reference to the internal combustion plants, page 14 being for all of such plants combined and pages 15 through 18 being for the individual plants located at Mott, Dickinson, Gettysburg and Lemmon, respectively.

Page 19 is as follows:

M. W. Stand. 220—1 Rev. 1-41

Page No. 38

_____ Company

_____

UNDISTRIBUTED OPERATING EXPENSES

Line No.		CURRENT MONTH		12 MONTHS TO DATE	
		THIS YEAR	LAST YEAR	THIS YEAR	LAST YEAR
1	CUSTOMERS' ACCOUNTING AND COLLECTING EXPENSES				
2	Supervision	891 85	885 00	3 569 24	3 520 91
3	Stationery, Postage and Cases	73 00	36 83	905 28	504 25
4	Credit Investigations and Records				
5	Meter Reading	1 291 55	1 [illegible] 36	14 704 92	13 366 25
6	Collecting	2 317 85	1 907 96	23 063 39	20 015 87
7	Customers' Billing and Accounting	1 774 [illegible]	1 176 45	17 156 12	14 [illegible] 19
8	Miscellaneous Expenses	140 52	103 23	1 [illegible] 56	1 510 [illegible]
9	Uncollectible Accounts	-		1 [illegible] 00	1 517 [illegible]
10	Rents	535 51	577 35	5 [illegible] 51	5 [illegible]
11	TOTAL CUSTOMERS' ACCTS. & COLLG. EXP. (1)	5 [illegible] 85	5 140 [illegible]	67 [illegible] 56	60 [illegible]
12	SALES PROMOTION EXPENSES				
13	Supervision	197 77	[illegible] 68	3 [illegible] 52	3 [illegible] 19
14	Salaries and Commissions	782 39	[illegible] 00	5 [illegible] 65	3 [illegible] 11
15	Demonstrators	150 19	[illegible] 65	1 [illegible] 79	1 [illegible]
16	Advertising	791 [illegible]	[illegible] 96	10 [illegible] 25	10 [illegible]
17	Miscellaneous Sales Expenses	14 [illegible]	107 30	[illegible] 15	1 [illegible]
18	Rents				
19	Memberships, Utilities and Contract Work (2)	[illegible] 68	[illegible] 00	[illegible] 76	1 [illegible]
20	TOTAL SALES PROMOTION EXPENSES (2)	1 [illegible] 35	2 [illegible] 97	[illegible] 81	[illegible]
21	ADMINISTRATIVE AND GENERAL EXPENSES				
22	Salaries of General Officers and Executives	[illegible] 85	[illegible] 00	11 [illegible] 35	10 [illegible]
23	Other General Office Salaries	1 [illegible] 05	1 [illegible] 72	[illegible] [illegible] 50	[illegible]
24	Expenses of General Officers	300 [illegible]	[illegible] 00	2 [illegible] 17	2 [illegible]
25	Expenses of General Office Employees	511 [illegible]	[illegible] 75	5 [illegible] 85	5 [illegible]
26	General Office Supplies and Expenses	1 [illegible] 78	1 [illegible] 98	12 [illegible] 82	11 [illegible]
27	Management and Supervision Fees and Expenses	1 [illegible] 00	1 112 [illegible]	11 [illegible] 67	12 [illegible]
28	Special Services	1 [illegible] 01		1 [illegible] 70	2 [illegible]
29	Legal Services	125 00	125 00	2 [illegible] 85	1 [illegible]
30	Regulatory Commission Expenses				
31	Insurance	1 [illegible] 12	1 137 00	11 [illegible] 56	13 [illegible]
32	Injuries and Damages			[illegible] 30	
33	Employees' Welfare Expenses	[illegible] 60	[illegible] 16	5 [illegible] 51	[illegible]
34	Pensions	1 [illegible] 72	1 [illegible] 27	14 [illegible] 57	14 [illegible]
35	Miscellaneous General Expenses	125 12	[illegible] 90	1 [illegible] 01	2 [illegible]
36	Maintenance of General Property				
37	Structures and Improvements	[illegible] 12	[illegible] 66	[illegible] 01	1 [illegible]
38	Office Furniture and Equipment	[illegible] 32	[illegible] 00	[illegible] 27	[illegible]
39	Communication Equipment				
40	Miscellaneous Property				
41	General Rents	[illegible] 63	600 07	7 [illegible] 56	7 [illegible]
42	Commissions Paid under Agency Sales Contracts				
43	Franchise Requirements	[illegible] 25	[illegible] 63	[illegible] 11	[illegible]
44	Duplicate Miscellaneous Charges—Credit				
45	Administrative and General Expenses Transferred—Credit	[illegible] 06	[illegible] 36	2 [illegible] 66	1 [illegible]
46	Joint Expenses—Debit or Credit				
47	TOTAL ADMINISTRATIVE AND GENERAL EXPENSES (2)	[illegible] [illegible] 75	[illegible] [illegible] 34	[illegible] [illegible] 75	[illegible] [illegible]
48					
49	Total Maintenance of General Property (Above)	[illegible] 94	[illegible] 67	1 [illegible] 60	[illegible]

FOOTNOTES ON U. S. A.

(1) [illegible]

[illegible]	3 [illegible] 78	3 [illegible] 17	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

(2) $ TO TOTAL OPERATING EXPENSES

Cust. Accts. & Coll'ns Expense	1 [illegible]	1 [illegible]	1 [illegible]	1 [illegible]
Sales Promotion Expense	[illegible]	[illegible]	[illegible]	[illegible]
Adm. & General Expense	[illegible]	[illegible]	[illegible]	[illegible]

Part of Defendant's Exhibit 82-25.

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M. W. Stand. 221—1-28-37 Printed in U. S. A

DAKOTA PUBLIC SERVICE COMPANY Company

DEC 1944

Page No. 19

ELECTRIC TRANSMISSION EXPENSES

Line No.	a	CURRENT MONTH THIS YEAR	CURRENT MONTH LAST YEAR	12 FISCAL YEAR TO DATE THIS YEAR	12 FISCAL YEAR TO DATE LAST YEAR
1	EXPENSES OF OPERATION				
2	Supervision and Engineering	959 05	13 04	2827 80	2 24 67
3	Load Dispatching Labor and Expenses	254 27	2 5 62	2105 54	2 855 85
4	Station Labor		21 52	342 85	401 01
5	Station Supplies and Expenses	29 53	45 27	647 78	480 46
6	Overhead Lines	623 87	415 01	5000 87	5 554 92
7	Underground Lines				
8	TOTAL TRANSMISSION OPERATION	1335 87	707 98	11 922 84	11 326 21
9	MAINTENANCE				
10	Supervision and Engineering	67 39	85 96	803 00	969 50
11	Structures and Improvements			7 50	
12	Station Equipment	31 37	203 98	357 10	862 84
13	Towers and Fixtures		284 94		
14	Poles and Fixtures	82 12		1432 12	4 711 43
15	Overhead Conductors and Devices	271 41	66 80	2270 28	1658 27
16	Conduit				
17	Underground Conductors and Devices				
18	Roads and Trails				
19	TOTAL TRANSMISSION MAINTENANCE	458 69	641 08	4871 00	8 202 04
20	RENTS	1666 66	1666 66	20 274 00	20 328 25
21	JOINT EXPENSES (Dr. or Cr.)				
22		. . .	. . .	. . .	. . .
23	TOTAL TRANSMISSION EXPENSES	3 461 22	3 015 72	37 069 84	40 956 60
24					
25	Miles of Pole Line Owned and Operated	742 90	742 90		
26	Miles of Pole Line Operated but Not Owned				

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Part of Defendant's Exhibit 82-25.

Pages 20 through 22 set forth the same type of information as that set forth on page 19 but with respect to separate divisions, being Bismarck, Dickinson and Mobridge, respectively.

Pages 23 and 23a are as follows:

M. W. Stand. [illegible] DULUTH PUBLIC SERVICE COMPANY

Page No. 423

Company

DEC 1944

ELECTRIC DISTRIBUTION EXPENSES

Line No.	all	CURRENT MONTH THIS YEAR	CURRENT MONTH LAST YEAR	FISCAL YEAR TO DATE THIS YEAR	FISCAL YEAR TO DATE LAST YEAR
1	EXPENSES OF OPERATION				
2	Supervision and Engineering	1 841 25	262 59	10 312 29	2 [illegible] 46
3	Load Dispatching Labor and Expenses				
4	Distribution Maps and Records	3 95	12 25	128 36	335 61
5	Other Distribution Office Expenses	110 46	62 42	1 146 26	598 50
6	Station Labor	191 64	209 13	2 722 63	2 [illegible] 15
7	Station Supplies and Expenses	111 82	95 45	1 866 02	1 [illegible] 42
8	Storage Battery Labor				
9	Storage Battery Supplies and Expenses	[illegible]		[illegible]	
10	Overhead Lines	329 64	220 69	3 [illegible] 65	4 [illegible] 62
11	Underground Lines				
12	Removing and Resetting Line Transformers	53 53	65 91	779 [illegible]	1 [illegible] 91
13	Removing and Resetting Meters	1 211 37	911 93	12 [illegible] 66	12 [illegible] 84
14	Other Services on Customers' Premises	2 [illegible] 23 41	2 [illegible] 31	34 [illegible] 51	31 [illegible] 99
15	Overhead Street Lighting System	532 57	498 28	5 [illegible] 36	6 [illegible] 54
16	Underground Street Lighting System				
17	TOTAL DISTRIBUTION OPERATION	9 221 61	5 [illegible] 65	93 [illegible] 36	69 [illegible] 13
18	MAINTENANCE				
19	Supervision and Engineering	827 67	300 40	2 [illegible] 90	3 [illegible] 90
20	Structures and Improvements				
21	Station Equipment	15 04	71 61	2 [illegible] 32	2 [illegible] 28
22	Storage Battery Equipment				
23	Poles, Towers and Fixtures	520 41	411 81	6 [illegible] 46	5 [illegible] 52
24	Overhead Conductors and Devices	486 12	361 96	4 [illegible] 61	4 [illegible] 57
25	Conduit				
26	Underground Conductors and Devices				
27	Line Transformers and Devices	481 27	229 81	3 [illegible] 81	2 [illegible] 05
28	Services	305 86	192 66	3 [illegible] 90	2 [illegible] 42
29	Meters	169 62	128 81	1 [illegible] 83	2 [illegible] 61
30	Installations on Customers' Premises	17 84	12 56	178 91	[illegible] 99
31	Leased Property on Customers' Premises				
32	Street Lighting and Signal System	412 02	583 02	3 [illegible] 91	3 [illegible] 05
33	TOTAL DISTRIBUTION MAINTENANCE	2 565 05	2 [illegible] 00	27 [illegible] 81	25 [illegible] 42
34	RENTS		1 00	9 [illegible] 50	[illegible] 00
35	TOTAL EXPENSES (Sts. 17 & 33)				
36					
37	TOTAL DISTRIBUTION EXPENSES	9 786 66	7 [illegible] 65	102 [illegible] 17	95 [illegible] 42
38	Miles of Pole Line	867 60	882 15		

Miles of Pole Line

Outside of boundaries 2300 V & over

Owned & operated	478	15
Operated but not owned	17	40
Total	495	55

Inside of boundaries

Owned & operated	402	05
Total	891	60

Servicing Customers Installations

Revenue	1	229	94	35 056	46
Cost	2	955	60	21 179	17
Net		294	14	3 877	29

Part of Defendant's Exhibit 82-25.

695

Pages 24 through 26 set forth the same type of information as that set forth on page 23 but with respect to separate distribution centers, being Bismarck, Dickinson and Mobridge, respectively.

Pages 27 through 32 set forth the same type of information as to heating earnings and expenses as that set forth on page 6 but with reference to the individual steam plants, being Beulah, Bismarck, Mandan, Dickinson, Ellendale and Mobridge, respectively.

Page 33 is as follows:

Pages 34 through 37 set forth the same type of information as that contained on page 33 but with reference to separate divisions and to the general office, such divisions being Bismarck, Dickinson and Mobridge.

The same kind of data and information is contained in the monthly operating reports for each of the other months.

Q. I show you book and record marked Defendant's Exhibit 82-25, and ask you if that is a record [your] produced from which you took the figures shown in Columns (1) and (2) under the year 1944, in Exhibit 82-12? A. Yes.

Q. That is one of the exhibits that is included in the Exhibit No. 82, isn't it? A. Yes.

Q. In speaking of your experience, I assume as a qualification, you answered your counsel that you had, on one occasion, been stationed out in the field on one of the properties of the plaintiff corporation. Is that right?

A. Yes.

Q. Where was that? A. Williston, North Dakota.

Q. You have a power plant there, do you?

A. Yes, we had.

Q. Is that one of the larger stations of the plaintiff company?

A. It is a subsidiary station for that company.

Q. How much generation do you have there?

A. That station has one 2000 KW unit.

Q. Does the plaintiff maintain an organization at that place? A. Yes.

Q. When was this that you were there?

A. I was there from about May, 1926 until late in October, 1927.

Q. What were you doing?

A. I was sent out to develop an accounting organization.

Q. Did they maintain an engineer at Williston.

A. Part of the time I believe we had a graduate engineer there.

Q. A man who handled and supervised the distribution?

A. We had a construction superintendent, yes.

Q. A man who had been with the company a long time, I take it? A. The company was not very old at that time.

Q. You also had a chief engineer, didn't you?

A. In the power plant, yes.

Q. Did he have an organization in the power plant under him as chief engineer?

A. Certainly he had an operating crew.

Q. Was this a division point of the plaintiff company, or a district office?

A. It was an enlarged division point. It has since been broken up into three divisions.

Q. At that time it was a large division point?

A. Yes. I divided it into two parts at that time.

Q. Did you have a district manager at that point?

A. We had a division manager.

Q. He was a man who was experienced in handling utility work, was he not?

A. I would say his experience was quite limited. We got him with the property we bought.

Q. Anyway he was there?

A. I testified before he was there about two thirds of the time.

Q. Along with this, I take it, that this division point carried the usual organizations so far as field work was concerned, line men, etc.?

A. At that time largely construction crews.

Q. How many people do you think were employed—Was this in May of what year? A. I went out in May, 1926.

Q. May 1926? A. Yes.

Q. You had just been with the company a year or two?

A. I had been there since July, 1924.

Q. How many men in the various departments do you think were employed at that division headquarters when you were there on this accounting work?

A. Talking about the whole division now?

Q. I am talking about the number working in and out of that Williston station?

A. Well, the staff was divided. The power plant crew was probably eight people, perhaps. There was a crew of distribution and construction men who worked in the communities around. It varied. I suppose probably twenty

men on an average. Transmission line and construction gang might be thirty. I am just making an estimate. There was another power plant at Kincaid which was at that time handled out of this office.

Q. You had men in charge of that plant, too?

A. There was a chief engineer, yes. Probably ten people in that plant. Then there were meter readers and such throughout the territory. In the combined areas probably twenty people. Then my accounting staff. Maybe ten cashiers locally. At three outlying points at that time.

Q. You didn't mean to infer to the Court then that you were running that division up there, did you?

A. I didn't make that statement, no.

Q. So there may be no question about that. What records did you use for the preparation of this tabulation, 82-9?

A. Well, the rentals, which I would find on the ledger sheet.

Q. What ledger sheet would that be?

A. Well, it appears in two places. It appears as accounts payable on Northern Power & Light, later Dakota Public Service. And accounts payable to Northwestern in monthly regular amount, $1666.67, with the odd $1666.66.

Q. Would that be billed separately each month?

A. I don't know that it was billed each month, but it was recorded each month. The first year, 1936, there was an item that had this item exclusively. Later it was buried among other items but always set out as a separate figure.

Q. Then, in your reserve capacity charges shown in Column 2, of 82-9, from what source did you get those figures?

A. That likewise appears on the ledger sheet as accounts payable item on the books of Northern Power & Light Co. and later Dakota Public Service Co., in favor of Northwestern Public Service Co. And appears also in an expense account, I believe, part of the time it was interchange power and part of the time it is power purchased. And further confirmed by the supplements to the interchange contract, the annual supplements.

Q. Was that likewise billed monthly?

A. Yes, it was entered monthly on the records.

Q. I observe that on your audit or tabulation, Exhibit 82-9, that you show a balance or payment for reserve ca-

pacity being made to the defendant by plaintiff's predecessor for that year of $12,685.20. Is that correct?

A. That is right.

Q. You didn't mean to infer that each separate month was a payment made to the defendant, did you, under that entry? A. No, that would not be correct.

Q. Now, will you refer again specifically to the reserve capacity paid for September, 1940? A. I have it.

Q. Who paid who there?

A. That was a charge by the Dakota to Northwestern of $234.30 for that month.

Q. Referring to October, November and December, 1940, were there some charges made by plaintiff's predecessor to the defendant, and payments made therefor?

A. That is right.

Q. Do you find any place in that account, Exhibit 82-38, where there is any refund to the defendant, or repayment to the defendant, of the amount of $234.50, for September, October, November and December, 1940, each month?

A. I take it you are speaking of $234.30?

Q. Yes. A. No, there is no such refund in this record.

Q. While we are speaking about interconnection rentals and the reserve capacity payments between the parties, I think your Exhibit 82-9 shows that the interconnection payments of $20,000.00 a year were paid each year from 1936 to 1945. Is that correct? A. Yes.

Q. And you say on a monthly basis. That is, it was allocated in monthly billing?

A. Yes. The charges were carried each month.

Q. It is a fact, isn't it, that that interconnection facility rental was predicated in that first instance on the 1936 contract? A. I assume it was, yes.

Q. And was the amount always the same?

A. Except for the variation of one cent every three months.

Q. That was to absorb the differential in the monthly allocations, wasn't it? A. That is right.

Q. I observe also on Exhibit 82-9 that you have a reserve capacity charge beginning with the year 1938 through 1945, all years inclusive. Do you find that on the exhibit? A. Yes.

Q. And that was predicated on the 1938 contract. Is that right?

A. I assume it has its origin in 1938 and successive contracts.

Q. But the method of computing the rates, etc., remained the same during the life, covering the years 1938 to 1945, inclusive?

A. Are you limiting your definition of rates to dollars and kilowatt of reserve capacity?

Q. Yes. A. Then the amount is the same.

Q. $13.20 per kilowatt? A. Yes, per year.

Q. Split into monthly payments under the contract. Is that correct? A. Yes.

Q. You have testified concerning the elimination of certain power units. I am not sure we got all of the names. Selfridge, Williston, Steele, Dawson, all in North Dakota. In South Dakota, Eureka, Ipswich, Lemmon, Leola, McLaughlin, Pollock. Do you have any others?

A. I guess that is all.

Q. You mentioned Lemmon in connection with this series of towns?

A. I said Lemmon was changed from steadily operated plant to a standby station.

Q. The power plant was not moved out then? A. No sir.

Q. Will you produce the records and files from which you get and make this statement?

A. 1930 operating reports for both companies.

Defendant's Exhibits 82-39 and 82-40 were received in evidence. They consist of, respectively, the financial statement of December, 1928 of Northern Power and Light Company, called "Interchange Report" and the operating report of the same company for 1930.

Q. Now, will you refer to Exhibit 82-39, insofar as it shows retirement of plants on the Northern Power & Light Co. system?

A. It shows that they were operating in the year 1928. It shows the amount of kilowatt hours produced in the station.

Q. Now, will you refer to the stations that you gave us? Is Selfridge on the northern companies' property? A. Yes.

Q. Did they generate in 1928?

A. They are not on this list, no. I believe they were acquired after that date.

Q. So there is nothing on that exhibit that shows Selfridge? A. That is right.

Q. What does it show there as the plant cost of kilowatt generation for that station at Eureka?

A. It shows a cost for that $4748.17, cost of generation in that plant.

Q. That is split down so it applies to kilowatt hour, is it not? A. Yes.

Q. And how much? A. 4.57 cents.

Q. That would be 42.7 mills? A. 45.7 mills.

Q. Now, you have, I presume, generally acquainted yourself with these other stations, haven't you, that you have mentioned? A. I think I am familiar with them.

Q. In each instance, without taking the time of the Court, these were rather isolated, worn-out type of generating machinery, weren't they?

Mr. Benson: We will admit that.

A. I won't admit it. For Eureka, that equipment was sent down to Kentucky to go into service.

Q. Anyway, when they generated electricity it cost 45.7 mills to generate it?

A. Certainly. That was the point in building transmission lines.

Q. All of this stuff was very expensive and inadequate generation?

A. It was the going plant of the day until transmission lines were built out there.

Q. And then it could not compete with the transmission line method in the sale of energy?

A. That was a natural evolution.

Q. That is what I am talking about. In some instances in these stations, generating costs ran as high as 150 mills, didn't it? A. I don't know as to that.

Q. You have one of them 184 mills?

A. It could if it was shut down a good deal of the time.

Q. So, as you say, it was just the process of elimination. Can you tell the Court now when any of those stations were either sold or disposed of or closed down?

A. No, I have no record of it. I have looked it up. I

know they were not operating in 1929, a good many of them. And those that were, were dropped out in 1930 or 1931.

Q. And that was in accordance with the engineering advice of Lucas & Luick? A. That is right.

Q. And that was before the defendant had anything to do with the system, wasn't it?

Mr. Fellows: We object to that as a statement of fact. The evidence shows here the joint and dual directors. Calls for the conclusion of the witness.

Mr. Royhl: I don't see anything about dual directors before 1929.

The Court: Do I understand the question is withdrawn?

Q. I am talking about the engineering advice that the northern company received and which you put in evidence here yesterday.

A. The engineering report is dated March, 1928, and that is about a year and a quarter before there was an actual transfer to the Middle West System, Middle West organization.

Q. I believe you testified yesterday that you found that on the Gettysburg substation some transformers had been changed which, at the time of the construction, actually belonged to the northern company. Is that right? A. Yes.

Q. I think you said that you found this out in making your audit. Is that right? A. That is right.

Q. Now, will you produce the ledger page showing the Gettysburg substation? The exhibit which you have now produced pursuant to the request is in two pages, one of which is marked Defendant's Exhibits 214-E and 214-F. Is that correct? A. That is correct.

Q. These are part of the records and files upon which you prepared your tabulations concerning interconnection facility costs?

A. That is the source of the information, yes.

Q. In addition to those, what did you produce, or what can you produce in support of your tabulations marked Plaintiff's Exhibit 88, in one page, and Plaintiff's Exhibit 88-A in four pages?

A. Do you mean in the way of ledger sheets?

Q. Whatever you used to build up those tabulations. Have you produced other papers?

A. This group. And also work order ledgers. I don't know where they are. What I mean is, I made an examination of those at Huron a year and a half ago.

Q. Did you hand me, in addition to 214-E and F, the ledger pages, 214-I, 214-B, C, D, G, H, and 214 and 214-A? Are those what you have handed me now?

A. I believe that is correct, yes.

Defendant's Exhibits 214 through 214-I were received in evidence. They are as follows:

			DESCRIPTION			1140	1143	1145	1146				PERIOD BALANCE
						340	343	345	346				
						LAND	SUB GR	POLES	O H COND				
		1925 J	382 AUTH 45 POLE LINE HURON - WOLSEY					8126 93					8126 93
		1927 J	777 AUTH N183 33 KV CURRENT HURON- "					2081 98	19447 28				21529 21
		1926 J	1074 AUTH N112 POLE LINE-HIGHMORE-REE HTS			82 93		6310 73					6393 66
		1926 D	RECT CHARGES - HIGHMORE TO REE HEIGHTS					334 50					334 50
		1926 J	9-1077 AUTH N138 POLE LINE-HIGHMORE-HARROLD			104 40		6644 89					6749 89
		1926 D	RECT CHARGES - HIGHMORE TO HARROLD					155 92					155 92
		1928 J	3-205 AUTH N254 NEW 33 KV LINE-WOLSEY-REE H			783 59		19262 76	33585 37				53631 72
		1928 J	3-205 AUTH N664 METALICIZE TEL LINE-REE H						601 77				601 77
		1928-29	DIRECT CHARGES WOLSEY-REE HTS					211 21					211 21
		1930 J	10-66 WO397 33 KV LINE HARROLD-BLUNT ALSO 33 KV CIRCUIT-REE HTS TO HIGHMORE					13880 37	22421 43				35511 80
		1930 J	10-66 WO420 33 KV LINE BLUNT TO GETTYSBURG ALSO 33 KV CIRCUIT-HIGHMORE TO HARROLD					28252 68	73072 48				101325 16
		1930 D	RECT CHARGES					261 75	214 64				47 11
		1931 J	3-64 WO757 CHOKE COILS NEAR HARROLD						670 74				670 74
		1931 J	3-64 WO759 METALICIZE TEL CO LINES -HARROLD					92 72	157 25				249 97
		1931 J	11-64 WO 1039 CHOKE COILS NEAR WOLSEY-BLUNT					94 16	430 13				524 29
		1931 J	12-99 WO 1069 CHOKE COILS NEAR REE HEIGHTS					46 97	195 11				242 08
		1932 J	10-62 WO 1008 J 11-55 INT NEW ARMS-VAYLAND TO ST LAWRENCE					681 24	106 72				787 96
		1932 J	11-63 WO 1009 R RETIRE NEW ARMS-VAYLAND-S.L.					315 25					315 25
		1934 J	11-61 WO 1243 R RETIRE PART OF EQUIP.-AUTH N254 NEAR WOLSEY					844 58	2987 90				3832 48
		1934 J	11-62 TRANSFER SWITCHES FROM SUB PER AUTH N254						1332 48				1332 48
		1931 J	3-64 WO609 NUMBER POLES					247 00					247 00
			TRANSFER BALANCE FROM OLD ACCT 1119				24851 86						24851 86
			TRANSFER BALANCE ACCT 1100.8 SUB LAND			175 00							175 00
			TOTAL 1-1-37 AFTER RECLASSIFICATION			1145 92	24851 86	84212 23	149247 50				259457 51
	1937												
		J 12-27	PWO					17 47					17 47
		J 5-29	PWO RET					16 45					16 45
		J 12-29	PWO RET					8 55					8 55
			TOTAL 12-31-37			1145 92	24851 86	84201 70	149247 50				259449 98
	1938												
		J 8-27	PWO				261 82	60 68	7 74				330 24
		J 8-31	TRANSFER EQUIP				39 24						39 24
		J 4-27	PWO					69 55					69 55
		J 5-27	PWO					28 73					28 73
		J 8-28	WO 1800 REBUILD WESSINGTON-VAYLAND					2749 69	623 26				3372 95
		J 9-27	PWO					86 37					86 37
		J 4-29	PWO RET					81 95					81 95
		J 5-29	PWO RET					32 36					32 36
		J 8-29	PWO RET					43 70					43 70
		J 8-30	WO 1801 R RET WESS.-VAYLAND FROM AUTH N254					672 73	393 92				1066 65
		J 9-29	PWO RET					105 29					105 29
						1145 92	25074 44	86263 69	149484 58				261968 63

FORWARDED

FORM 509 10M 11-50

SUBSIDIARY LEDGER SHEET

Northwestern Public Service Co.
COMPANY

ABERDEEN SUBSTATION #3A
DIVISION OR PLANT

GEN'L LEDG. OR CONTROL DEPART. RECORD — CO. A/C NO. 3148

SUB LEDG. — FPC A/C NO. —

SHEET NO. 8

DATE	REFERENCE	DESCRIPTION	ITEM NO	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
[illegible]	J 12-28	#0 2229 MAIN POWER CABLES CONTROLS ETC		157.43				
		#0 2243 1-DISC SWITCH 34.5 KV 400 AMP		665.83	[illegible]			
		2-12' CROSS ARMS		64.37				
		1-1 3/8 LH PIN		1.76				
		1-45 KV INSUL		3.80	[illegible]			
		#95-#1.3 STRAND COPPER WIRE		31.03				
		35 #1500 SUSP INSUL		222.05	[illegible]			
		1 #30413 5000V INSUL		17.05				
		1-#200S KEES INSTRUMENT TRANS		22.42				
		1-5000 KVA TYPE OISC 34.5-69 TO 13.2 KV TRANS SERIAL # 3461723		19,027.27				
		1-OUTDOOR METALCLAD SWITCHGEAR		13,604.50				
		FOUNDATION FOR TRANS & CUBICLES		2,402.90				
		150' #4VCL 2/0 9KV CABLE		250.87				
		400' 1/500,000 CM LEAD COVERED CABLE		1,136.69				
		100' 1/0 STRAND 25/34 VC-SBFMR CABLE		173.77				
		100' 1/500,000 CM 25/34 VC-SBFMR CABLE		333.42				
		1100' 4 COND 19/25 FLAMENAL CONTROL CABLE		576.82				
		10 CONCRETE CABLE DUCTS		215.37				
		5- GE #3563250G15-18 POINT TERMINAL BOARDS		26.02				
		8- EBONY ASBESTOS BARRIERS & SUPPORTS		33.03				
		5- ERONIZED PANEL BOARDS		30.01				
		3-GE 94X117 TYPE ADS 0-300 AMP AMMETERS		80.15				
		1-GE 250X97 TYPE 9AD13MAA1 60 CY SYNCHROSCOPE		211.36				
		1-GE 94X360 TYPE 8ADSKR415 REACTIVE KVA METER WITH TYPE 12X259 GE AUTO TFR		84.64				
		1-GE 94X235 TYPE ADS 5 AMP 115V SCALE 0-8 MEGAWATTS 3 PH 3 WIRE WATTMETER		74.37				
		3-GE 94X108 TYPE ADS SCALE 0-150V-8ADSVAK15 VOLTMETER		87.20				
							178,670.59	

FORWARDED 41

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Defendant's Exhibit 214-C.

COMPANY NORTHWESTERN PUBLIC SERVICE COMPANY
UTILITY ELECTRIC
CONTROL A/C TANGIBLE

PLANT
LOCATION HURON SUB TO BETTYSBURG TAP LINE NO. 9
12.9 Miles

BETTYSBURG

PREVIOUS BALANCE	DATE	REFERENCE	DESCRIPTION	CO. ACCT. NO. / P. P. C. ACCT. NO. / ITEM	TA40 360 LAND	TA43 363 SUB S/A	TA45 365 POLES O/H COND	TA46 366				PRESENT BALANCE
261968 63	1939	J 10-28	WO 1906 Right of Way - No Wires		350 65		600 06					
262928 32		J 10-30	WO 1907R				257 17					262671 15
262671 15		J 11-29					20 59					262650 56
			Total 12-31-39		1,496.87	25,074.44	86,894.97	149,484.58				
262650 56	1940	J 1-27	PWO ADD				27 45					262678 01
262678 01		J 5-29					30 59					262647 42
262647 42		J 6-27	PWO ADD				93 53					262740 95
262740 95		J 6-29	PWO RET				56 69					262684 26
262684 26		J 8-27					79 12					262763 45
262763 45		J 8-29					52 88					262670 57
262670 57		J 12-83					29 50	92 04				262549 08
			Total 12-31-40		1,496.87	25,074.44	86,585.48	149,392.54				
262549 08	1941	J 8-27	PWO ADD				34 11					262583 14A
262583 14		J 8-29	PWO RET				28 60					262554 54A
			Total 12-31-41		1,496.87	25,074.44	86,590.99	149,392.54				
262554 54	1942	J 2-27	PWO ADD				48 35					262602 89A
262602 89		J 4-30	SRWO CL			4853 82						257949 07A
257949 07		J 5-27	PWO ADD				16 72					257965 79A
257965 79		J 9-29	PWO RET				13 20					257952 59A
257952 59		J 11-27	PWO ADD				18 48					257971 07A
			Total 12-41-42		1,496.87	30,680.88	86,891.34	149,353.84				
257971 07	1943	J 7-27	PWO ADD				204 28					258175 35A
258175 35		J 7-29	PWO RET				191 50					257983 85A
257983 85		J 9P27	PWO ADD				155 04					258138 89A
258138 89		J 9-29	PWO RET				197 72					257941 17A
257941 17		J 9-31	MISC			1628 65						256312 54A
256312 54		J 11-27	PWO ADD				41 05					256353 59A
256353 59		J 11-27	PWO ADD					6 98				256360 57A
256360 57		J 11-29	PWO RET				35 36					256325 21A
256325 21		J 11-28	SWO COMP WO 1916			2210 00						258535 21A
			Total 12-31-43		1,496.87	38,001.99	86,697.13	149,399.52				
258535 21	1944	J 4-31	MISC			2710 23						255824 99A
255824 99	1944	J 10-31	MISC			113 59						255711 30A

Filed Feb 19. 1948
Roy D Marker
Clerk

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PLANT LEDGER RECORD

COMPANY
UTILITY NORTHWESTERN PUBLIC SERVICE CO
ELECTRIC
CONTROL T.I TANGIBLE

PLANT
LOCATION TRANSMISSION
HURON SUB TO GETTYSBURG SUB LINE NO 9
129 MILES.

GETTYSBURG

PREVIOUS BALANCE	DATE	REFERENCE	DESCRIPTION (CO. ACCT. NO. / F.P.C. ACCT. NO. / ITEM)			1140 340 LAND	1143 343 SUB 9A	1145 345 POLES	1146 346 O H COND				PRESENT BALANCE
255711 39	1944	J 11-29	PWO RET					26 85					255684 54
			Total Dec 31, 1944			1,496.57	18,178.17	86,610.28	149,399.52				
255684 54	1945	J 6-27	PWO ADD					39 46					255724 00
255724 00		J 6-29	PWO RET					44 28					255679 72
255679 72	1945	J 8-27	PWO ADD					12 40					255692 12
255692 12	1945	J 9-27	PWO ADD					58 71					255750 83
255750 83		J 9-29	PWO RET					54 65					255696 18
			Total 12-31-45			1,496.57	18,178.17	86,681.82	149,399.52				
255696 18		J 6-27	PWO ADD					114 41					255810 59
255810 59	1946	J 6-29	PWO RET					121 30					255689 09
255689 09	1946	J 9-27	PWO ADD					44 94					255734 03
255734 03		J 9-29	PWO RET					45 56					255688 47
			Total Dec. 31, 1946			1,496.57	18,178.17	86,614.21	149,399.52				
255688 47	1947	J 1-27	PWO ADD					46 64					255735 11
255735 11	1947	J 3-29	PWO RET				512 52						255222 59
255222 59		J 3-31	BISC				3718 29						251444 30
251444 30		J 9-27	PWO ADD					43 58					251487 88
251487 88		J 9-29	PWO RET					59 86					251428 02
251428 02	1947	J 10-27	PWO ADD					1404 42					252832 44
252832 44		J 10-29	PWO RET					1691 95					251290 49

Filed Feb 19. 1948
R Boy D Mayhew
Clerk

4.

FORM [illegible] SM 1-28

SUBSIDIARY LEDGER SHEET

GETTYSBURG SUBSTATION # 9A DIVISION

APPROPRIATION

ESTIMATED COST STATION

DETAIL RECORD

ACCOUNT

ACCOUNT NO. 2143 SHEET NO. 2

DATE	REFERENCE	QUANTITY AND DESCRIPTION	ITEM NO.	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
AUG 3[illegible]	J 8-27	PWO 9428 2-8X64509 Meter						
		Form W11S V BOCYC GE		146 46				
		2 77x313 TR 20 A 3W 3PH						
		Watt Hr Meters GE		50 61				
		1 #14 3W Lead C BLE		6 00				
		MiscMat and Stores Expen[illegible]		82				
		Installation		50 30				
		3% Admin & Gen Exp		7 63			25 113 68	
	J 8-31	Transfer 1 Dis-7 GE Sa Met[illegible]						
		[illegible] Stock		39 24			25 074 44	
		NO.2156R						
APR 30 42	J 4-30	3[illegible]000KVA TRANSFORMERS 22000/2300V			3,968.66-		21,105.78	
APR 30 42	J 4-30	OVERHEADS			685.16-		20,420.62	
SEP 30 43	J 9-31	SET OF 3 22 KV S.E. ARRESTORS			1,000.00			
		LABOR			191.31			
		OVERHEADS			437.32		[illegible]	
SEP 30 43	J 9-31	CORR			1,000.00		18,791.99	
		CORR			191.31			
		CORR			437.32		20,420.62	
SEP 30 43	J 9-31	SET OF 3 22 KV E.E. ARRESTERS		1,000.00				
		LABOR		191.31				
		OVERHEADS		437.32			18,791.99	
NOV 30 43	J 11-28	WO 2416 2 G.E. VOLTAGE						
		REG TYPE IRS 24KVA 2400V 100						
		AMP SER #6794973 74		2,006.34				
		INSTALLATION		126.86				
		OVERHEADS		76.80			21,001.99	
APR 30 44	J 4-31	1 WHSE SWITCH HOUSE WITH						
		EQUIP TRSF'D TO BITCHOCK						
		SUB 216A		1,664.12				
		ORIG LABOR 19.1306%		318.36				
		ORIG OVERHEADS						
		36.7089%		727.75			18,291.76	

FORWARDED

45

727

Defendant's Exhibit 214-E.

SUBSIDIARY LEDGER SHEET

Detail Record

Riverton Substation # 3 A DIVISION

APPROPRIATION

ESTIMATED COST STATION

ACCOUNT

ACCOUNT NO. 1143 SHEET NO. 2

DATE	VOUCHER	QUANTITY AND DESCRIPTION	ITEM NO.	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
		Labor			W.O. 1081		100.41	
		Labor			W. O. 278		904.27	
		Incidentals			W. O. 278		980.07	
		Labor & Incidentals			M-194		748.14	
		10-100/200 Amp. P.V. Regulators					) 12,775.55	
		6-9 Pole Disconnects					) 698.56	
		Labor					) 734.15	
		Incidentals			W.O. 495		) 525.90	
		Interest					) 644.54	
		Supervision					) 1,153.82	
		Balance per Physical Inventory Nov 30, 1934					110,614.79	
1935	J 12-9	FWO 8 3-842 3393 M C						
		Relays		68.63				
		2% Supervision		2.06			110,685.48	
	J 4-23	FWO #287 Remove st.light post and floodlight unit not in use			148 80		110 536 98	
1937	J 2-9	3 SV2Relays		67.45				
		Labor & Incidentals		22.42			110 626 85	
	J 3-9	Misc Material		4.03				
		Install Relays		38.84				
		Contingencies		3.50				
		Add Supervision		4.09			110 677 31	
	J 4-27	FWO #250 Labor & Material						
		Installing relays		6 16				
		Overhead Const Costs		18			110 683 85	
SEP 30		Engineering Distributed		26 67				
		D & Z amp adjustment 59.93		1 003 10			109 707 22	
SEP 30	J 9-27	JULY CMBS-1 46x382 TR 1200 AMP 120-2400V POLYPHASE WATTHOUR METER 60CY TYPE D321 3 WIRE 3 PHASE CT 1200 5 PT 2400 120 DETENT CO 72487 SER 19795768		67 15				
		OVERHEADS		2 01			109776 38	

Filed Feb 19, 1948
Roy L Marker clerk

FORWARDED

Defendant's Exhibit 214-B.

FORM NO. 303 SM 1-33

SUBSIDIARY LEDGER SHEET

ABERDEEN SUBSTATION # 3 A — DIVISION — ACCOUNT

APPROPRIATION

ESTIMATED COST — STATION

DETAIL RECORD

ACCOUNT NO. 1143 SHEET NO. 3

DATE	REFERENCE	QUANTITY AND DESCRIPTION	ITEM NO.	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
NOV 39	J 11-27	INSTALLATION ON TYPE DS 21 G.E. WATTHOUR METER. CO #72487		16.78				
		OVERHEADS		.50			109,793.66	
SEP 30 40	J 9-27	1-DELTA STAR TRANSFORMER		30.00				
		3% AD & GEN EXP		.90			109,824.56	
NOV 30 40	J 11-27	4 MANHOLE COVERS WITH GASKET AND GROUND STUDS		37.34				
		OVERHEADS		1.13			109,863.23	
DEC 31 40	J 12-27	1 POTENTIAL TRANSFORMER #3236782 TYPE E 126 50/60 500-23000V KD SER # 6407480		649.90				
		OVERHEADS		19.50			110,532.63	
JAN 31 41	J 1-27	1-PLATFORM FOR POTENTIAL TRANSFORMERS		9.95				
		OVERHEADS		.30			110,542.88	
[illegible] 28 41	J 2-27	LABOR INSTALLING TYPE E-126 500VA 23000V POTENTIAL TRANSFORMER		22.79				
		OVERHEADS		.82			110,566.49	
[illegible]OV 30 41	J 11-28	1-G.E. TRANSFORMER [illegible] 5000V KVA 39900Y/33000 SER#6622297		12,901.11				
		INSTALLATION		381.74				
		OVERHEADS		478.19			124,327.53	

FORWARDED

43

Defendant's Exhibit 214-B.

717

FORM 888 1BM 11-38

SUBSIDIARY LEDGER SHEET

Northwestern Public Service Co
COMPANY

GEN'L LEDG OR CONTROL DETAIL RECORD

CO A/C NO 113

ABERDEEN S STATION #3A
DIVISION OR PLANT

SUB LEDG

FPC A/C NO

SHEET NO 3

DATE	REFERENCE	DESCRIPTION	ITEM NO.	DEBIT	CREDIT S	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
EC 31 41	J12-28	WO 2129 16 GROUND RELAYS		794.42				
		2 CURRENT TRANSFORMERS OUTDOOR TYPE		64.14				
		TEST SWITCHES		88.27				
		106 CONDUIT		31.06				
		145' CABLE AND WIRING		176.76				
							125,482.18	
EC 31 41	J12-28	OVERHEADS		41.57			125,523.75	

SUBSIDIARY LEDGER SHEET

Northwestern Public Service Co.

GEN'L LEDG. OR CONTROL - DEBIT RECORD — CO. A/C NO. 1145

SUB. LEDG. - — FPC A/C NO. —

[redacted] — SHEET NO. 8

DATE	REFERENCE	DESCRIPTION	ITEM NO.	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
[illegible] 31 46		1-GE 250X68 TYPE DS38 3 PH 3 #IRE						
		#ATTHOUR METER		55.29				
		2-1658-1-82 GE CONTROL S#ITCHES						
		FOR OCB		52.51				
		1-16581CF1 GE VOLTMETER S#ITCHES		12.94				
		1-GE 121AC53IR TYPE IAC 3						
		PH RELAY		125.41				
		2-GE 71983-25VA 115/24V						
		TRANS		7.05				
		1-#HSE S-1163958 TYPE MG4						
		RELAY		23.86				
		#232 #2 MHD BARE COPPER #IRE		136.35				
		2- GROUNDS		11.16				
		#58 1/4 X 2" X 20 COPPER						
		BUSS BAR		55.14			179,150.30	
[illegible] 31 47	J 10-25	1-DISC S#ITCH 34.5 KV						
		400 AMP			665.83			
		1-45 KV INSULATOR			3.80			
		36-#1900 SUSP INSUL			222.05		178,258.62	

Filed Feb 19. 1948
Ray D Mosher, Clerk

Defendant's Exhibit 214-D.

SUBSIDIARY LEDGER SHEET

Detail Record

Gettysburg Substation # 9A DIVISION ACCOUNT

APPROPRIATION

ESTIMATED COST STATION ACCOUNT NO. 1128 SHEET NO. 1

DATE	REFERENCE	QUANTITY AND DESCRIPTION	ITEM NO.	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
		Items ruled out are retired						
		Substation Structure - Pacific Elec. Co. with following Equipment:						
		6 - PE - 37 KV Switches, 1 pole # Q6718			W.O. 420		2,284.70	
		21- PE - 7.5 KV Switches, 1 pole PE 7102						
		2 - PE - 37 KV Switches, 3 pole						
		2 - West Switch houses with following Equipment each:						
		1 - 4500 V Reclosing OCB						
		1 - Slate Panels						
		2 - CO Relays			W.O.420		3,288.24	
		1 - Magnetic Contactors						
		1 - KWH Meter						
		1 - Recl. Relays						
		2 - CT 120-5 Amps.						
		2 - PT, 2300-110 V						
		~~2 - 250 Outdoor Regulators, 6,600 - 333 KVA - 2300 V~~			W.O. 420		~~3,620.98~~	
		~~Foundations~~			"		214.70	
		1 - G.E. 33 KV of Arrester			"		1,141.34	
		~~1 - G.E. 33 KV of Arrester~~			"		~~1,060.00~~	
		Labor			"		1,796.17	
		Overheads			"		4,100.98	
		Poles from old Nolsey Sub.			Auth N-234		214.17	
					Overheads N-[illegible]		42.85	
		6 - 200 KVA, 33000-2300 V Transformers from Mitchell Sub.			N-18		3,125.80	
					" Overhead		287.00	
		~~3 - 500 KVA - 33000-2300 V Transformers from old Gettysburg Sub.~~			Appraisal		3,968.84	
					Overheads		635.16	
		2 - 3 KVA, 2300 V-115/230 V Transformers			From 1127		97.20	
		Balance per Physical Inventory Dec 30. 1934					[illegible]	
	J	~~3-9-19 XD M-6 Meter trsfd from Sub. 38.10~~						
		~~3% Supervision 1.14~~					23,821.86	
		Metering equipment						
		1 GE A-6 10 Amp 33000						
		Serial #275102						
		1 Combination Potential						
		with metering cabinet		1,000.00				
		3% Supervision		30.00			24,851.86	
		The concrete foundation, conduit, wiring & connections for the above was charged direct to expense.						

Filed Feb 19. 1948
Roy E Mosher
Clerk

FORWARDED

Defendant's Exhibit 214-E.

SUBSIDIARY LEDGER SHEET

Northwestern Public Service Co

GEN'L LEDG. OR CONTROL

CO. A/C NO 1383

SUB. LEDG. SUBSTATION # 9A

PPC. A/C NO

SHEET NO 3

DATE	REFERENCE	DESCRIPTION	ITEM NO.	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
31 47	J 10-31	3 PE 7.5 KV SWITCHES 1 POLE BB 7182		113.59			18,178.17-	
31 47	J 3-31	2-IRS REG 69 11 1/2 KVA 2300V TO HURON SUB						
		299A		2,319.93				
		LABOR		443.82				
		OVERHEADS		1,014.54			14,399.88	
31 47	J 3-29	FOUNDATION FOR REG			314.70			
		LABOR			60.20			
		OVERHEADS			137.62		13,887.36	

Filed Feb. 19. 1948
Cora D. Wacker
Clerk

Defendant's Exhibit 214-F.

COMPANY NORTHWESTERN PUBLIC SERVICE COMPANY
UTILITY ELECTRIC
COUNTY [illegible]

PREVIOUS BALANCE	DATE	REFERENCE	DESCRIPTION	LAND											
		1939 J	10-66 WO 404 28 1-2 M 22000 V 3 PH LINE				28835 24	37450 73							
		1951 J	3-64 WO 609 NUMBERING POLES				65 00								
		TOTAL	3-1-37 AFTER RECLASSIFICATION				28820 24	37450 73							64370 97
64370 97	1940	J 5-28	WO 2040 [illegible]				1913 64	196 58							65689 19
65689 19		J 5-30	WO 2041a [illegible]				367 56	57 67							65183 98
65183 98		J 12-28	WO 2068 1-4 MI ADD AT IPSWICH				226 38	454 28							65864 56
			Total 12-31-40				27,888.78	38,041.84							
65864 56	1941	J 8-30	SWO COMP WO 2068R				2690 45	4178 45							60098 68
			Total 12-31-41				30,138.30	34,908.39							
60098 68	1942	J 5-27	PWO ADD				30 80								60069 48
60069 48		J 5-29	PWO RET				27 79								60041 69
			Total 12-31-42				30,138.30	34,908.39							
60041 69	1943	J 8-27	PWO ADD				43 67								60085 36
~~60085 36~~		~~J 8-29~~	~~PWO RET~~				~~44 21~~								60041 15
60085 36		J 8-29	PWO RET				44 21								60077 42
60041 15		J 11-28	PWO ADD				36 27								60048 16
60077 42		J 11-29	PWO RET				29 26								60097 69
			Total 12-31-43				30141.77	34,908.39							60050 26
60048 16	1944	J 8-27	PWO ADD				49 53								60523 95
60097 69		J 8-29	PWO RET				47 43								60256 30
60050 26		J 8-28	SWO COMP WO 2517 CROSSOVER				217 60	256 09							
60523 95		J 8-30	WO 2518 R CROSSOVER				101 30	76 25							
			Total Dec 31, 1944				28169.97	35086.33							
60256 30	1945	J 6-27	PWO ADD				44 42								60900 72
60900 72		J 6-29	PWO RET				42 00								60258 72
			Total 12-31-45				28,172.39	35,086.33							

Filed Feb 19 1948
Ray D. Markee
Clerk

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PLANT LEDGER RECORD

COMPANY NORTHWESTERN PUBLIC SERVICE COMPANY
UTILITY ELECTRIC
CONTROL 1.1 TANGIBLE

PLANT TRANSMISSION
LOCATION ABERDEEN SUB TO BARNARD SUB NO 1
20 miles

PREVIOUS BALANCE	DATE	REFERENCE	DESCRIPTION	CO. ACCT. NO. / P.P.C. ACCT. NO. / ITEM	1140 340 LAND	1143 343 SUB	1145 345 POLES	1146 346 O H COND	PRESENT BALANCE
		1930 J	10-66 WO 404 22000v 3PL TRANS. LINE 20 MI				19533 00	27807 00	47340 00
		1931 J	3-64 NUMBERING POLES				30 00		30 00
		1927 J	11-1299 RIGHT OF WAY		98 00				98 00
		TOTAL	1-1-37 AFTER RECLASSIFICATION		98 00		19563 00	27807 00	47468 00
	1938								
		1938 J	2-27 PERM WORK ORDERS				8 55		8 55
		J 3-27	PWO SWITCH STOOLS				199 72		199 72
		J 4-27	PWO				42 35		42 35
		J 7-27	PWO				15 45		15 45
		J 4-29	PWO RET				56 84		56 84
		J 7-29	PWO RET				19 37		19 37
		TOTAL	12-31-38		98 00		19752 86	27807 00	47657 86
	1939								
		J 7-27	PWO				116 24		47774 10
			Total 12-31-39		98.00		19,869.10	27,807.00	
47774 10	1940	J 5-29	PWO RET				28 24		47745 86
47745 86		J 7-27					137 74	13 04	47896 64
47896 64		J 7-29					79 40		47817 24
47817 24			Total 12-31-40		98.00		19,889.20	27,820.04	
47830 59	1941	J 3-27					67 76	45 59	47830 59
47824 90		J 3-29					12 62	93 07	47824 90
			Total 12-31-41		98.00		19,954.34	27,772.56	
47894 41	1943	J 5-27	PWO ADD				69 51		47894 41
47844 50		J 5-29	PWO RET				49 91		47844 50
47995 68		J 7-27	PWO ADD				151 10		47995 68
47838 79		J 7-29	PWO RET				156 81		47838 79
			Total 12-31-43		98.00		19968.33	27,772.56	
47816 16	1944	J 4-29	PWO RET					22 63	47816 16
47878 59		J 5-27	PWO ADD				62 43		47878 59
47833 51		J 5-29	PWO RET				45 08		47833 51
47872 85	1944	J 9-27	PWO ADD				39 34		47872 85
47832 49	1944	J 9-29	PWO RET				40 36		47832 49
			Total Dec. 31, 1944		98.00		19984.56	27749.93	
47878 76	1946	J 7-27	PWO ADD				38 48	7 79	47878 76
47825 67		J 7-29	PWO RET				43 07	10 02	47825 67
			Total Dec. 31, 1946		98.00		19,979.97	27,747.70	

Filed Feb 19 1948
Ron D Walker
Clerk

FORM NO. 210 SM 1-48

SUBSIDIARY LEDGER SHEET

Aberdeen Substation # 3A DIVISION

APPROPRIATION

ESTIMATED COST STATION

ACCOUNT [redacted]

ACCOUNT NO. 1143 1

DATE	REFERENCE	QUANTITY AND DESCRIPTION	ITEM NO.	DEBIT	CREDIT	PREVIOUS BALANCE	BALANCE CURRENT MONTH TO DATE	BALANCE CURRENT YEAR TO DATE
		Sub Structure and Equipment						
		Delta Star Type T, Form 176, La Hice						
		Steel Structure - Bus Copper						
		6-D.S. PM-34, # 1125021-6-37 K.V. Switches, 3 Pole						
		14- D.S. CEM, # 2560021-6-37 KV Switches, 3 Pole						
		6- D.S. PB-2, # 620084-7.5 KV Switches, 1 Pole						
		6-D.S. PB-2, # 620082- 7.5 KV Switches, 1 Pole			W.O. 404		17,013.80	
		3-D.S. PM-34, #1170021-3-37 KV, 2 Pole						
		6-D.S. DLO, #770072-3- 37 KV, Bus Supports						
		3-D.S. DLO, #770082-3- 37 KV, Bus Supports						
		28-D.S., DLO, #700182-3- 37 KV, Bus Supports						
		28-D.S. DLO, #728218-3-37 KV, Bus Supports						
		3-Galv. Iron Stands for 3-CT & 1-PT						
		3-Galv. Iron Stands for 1 PT						
		Foundations for Structure, etc.			W.O. 404		3,016.32	
		" " " "			E-194		147.49	
		Control Panels and Instruments			W.O. 404		3,978.74	
		600 MCM-5,000 V, 3 Cond. Cable-300'			W.O. 404		1,577.07	
		" " " " " "			W.O. 404		408.99	
		Control Cable - 300'			E-194		113.37	
		Conduit, Potheads and Junction Boxes			W.O. 404		975.98	
		3 - Arresters - G.E. type of 37-60 KV			W.O. 404		3,189.24	
		" " " " " "			E-194		1,068.41	
		3/- Arresters - G.E. Type of 28-37 KV			Original Sub.		1,068.41 Appr. O.C.	
		3 - G.E. Breakers, Type FKD-126-60 KV-400 Amps.			W.O. 404		4,770.39	
		" " " " " " " "			E-194		4,479.88	
		3- G. E. Breakers, Type FKD-126-37 KV-300 Amps.			W.O. 404		2,696.81	
		All breakers equipped with 120 V D.C. Solenoid Control						
		4- G.E. P. T. 22,000/110-600 V.A. Type E-116			W.O. 404		2,470.88	
		2-G.E. P. T. 34,500/115-600 V. A. Type E-116			W. O. 40		1,315.79	
		2- G.E. P. T. 33,000/110-600 V.A. Type E-116			E-194		998.16	
		6- G.E. C. T. 60 KV-25/50-5 Amps, Type EC-220			W.O. 404		2,688.17	
		3- G. E.C. T. 37 KV-25/50-5 Amps, Type EC-215			W.O. 404		888.56	
		4- G.E. C. T. 37 KV-25/50-5 Amps, Type EC-61			E-194		998.36	
		3- G.E. C. T. 37 KV-50/100-5 Amps, Type EC-215			Original Sub.		1,314.18 Appr. O.C.	
		3-1667 KVA, 28,000/2300 V Transformers			W.O. 370		11,766.12	
		Moloney #2662015,6,7						
		1-6750 KVA-28,000-22,000/2300 V Auto Transformer						
		Moloney # 2662278			W.O. 1062		5,871.62	
		TOTAL MATERIAL					70,288.88	
		LABOR			W.O. 404		5,868.73	
							76,157.61	
		Construction Overheads			W.O. 404		11,179.88	
					E 194		1,020.00	
					W.O. 370		1,407.88	
					W.O.1062		688.98	
					Original Sub.		478.81	
		Incidentals			W.O. 1062		116.00	

Filed Feb 19, 1948
Roy L. Meyer
Clerk

FORM

Defendant's Exhibit 214-I.

Q. And those, generally speaking, are ledger pages of the defendant company?

A. Those are the property ledger sheets.

Q. And they reflect the cost of the Gettysburg substation. Is that right?

A. They reflect the charges which are supposed to represent the cost of the substation.

Q. And you used these, I take it, in the preparation of your tabulations, 88 and 88-A?

A. That was the source of my information. I went back into the record behind it, of course.

Q. Now, you say you went behind the record. What additional records and files did you get on this subject?

A. I think I had the work orders.

Q. They are part of the general Exhibit 55, are they?

A. Yes.

Q. By reference to the ledger pages you can indicate the work orders that you used, can you? A. That is right.

Q. Will you refer to the ledger sheets and give us the number of the work orders you used?

A. Work order 404, 420, 397, and N-138. Those are the primary construction work orders. There are minor changes since that date.

Q. Can you find those?

A. I believe so. I suppose all of these work orders have a bearing. They have been requested or subpoenaed and are here. The primary ones are the original construction I referred to. No. 397 I believe is already an exhibit.

Q. You said these you are now producing are a part of general Exhibit 55?

A. That is right. Perhaps I better give you a few more.

A. (Cont) I had better include work order 1081 also.

Defendant's Exhibit 55-18 was received in evidence. It is in part as follows:

LIBRARY
SUPREME COURT, U.S.

Vol. III

TRANSCRIPT OF RECORD

(Pages 737 to 1008)

Supreme Court of the United States

OCTOBER TERM, 1950

No. 77

MONTANA-DAKOTA UTILITIES CO., PETITIONER,

vs.

NORTHWESTERN PUBLIC SERVICE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 17, 1950.

CERTIORARI GRANTED OCTOBER 9, 1950.

Vol. III.

Pages 737 to 1008, Inclusive.

RECORD.

United States Court of Appeals,

EIGHTH CIRCUIT.

No. 13,887.
CIVIL.

NORTHWESTERN PUBLIC SERVICE COMPANY, A CORPORATION, APPELLANT,

vs.

MONTANA-DAKOTA UTILITIES CO., A CORPORATION, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA.

FILED DECEMBER 30, 1918.

United States Court of Appeals,

EIGHTH CIRCUIT.

No. 13,887.
CIVIL.

NORTHWESTERN PUBLIC SERVICE COMPANY, A CORPORATION, APPELLANT,

vs.

MONTANA-DAKOTA UTILITIES CO., A CORPORATION, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA.

FILED DECEMBER 20, 1948.

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AUTHORIZATION APPLICATION

NORTHWESTERN PUBLIC SERVICE COMPANY

Division HURON Application No. 454

Department Transmission Highmore-Harrold Line Authorization No. N-136

Date April 24, 1926

To The Albert Kimmel Co., Inc.: Authority is asked for the expenditure of $ $8,595.72 for Construction / Retirement 9150 / Replacement, purposes in the month of August 192

Instructions: In making out these applications always remember to give the following information:
1st—Give full description of work necessary or desired, with sketch where possible.
2nd—Check mark all items in your stock available for this job.
3rd—Be sure to state revenues to be gained or economies to be effected by completion of this work.
4th—State when these expenditures will be required.
5th—Any unusual or RUSH application must be accompanied by full explanation and reasons, otherwise 30 days may be considered reasonable time for application approval or denial.

General Description:

Authority is asked for the above sum to build a 6600 Volt line from Highmore to Harrold. This line will be a duplicate in every respect of the line from Highmore to Ree Heights line.

Filed Feb 19 1948
Roy E Marker
Clerk

Application Received - 9-7-26.
Work completed 8-1-26

Details on opposite side of sheet, or may be attached.

Approved by A E Burns
Authorized by C B Zeigler
Date Authorized 9-9-26

Recommended by C P Money, E L Hart, E Blake, J A Ward

Work begun
Completed

Estimated Cost $ 8595.72.
Actual Cost $

737

Defendant's Exhibit 55-18.

DETAILED ESTIMATE OF COST

Quantity Estimated	Quantity Actual	Item	Estimated Cost	Actual Cost
		15 - 30'6" W.R.C. Poles	96.00	
		300 - 35'7" " "	3510.00	
		15 - 40'8" " "	225.00	
		4 - 45'8" " "	80.00	
		350 - 8' - 4x6 arms	315.00	
		350 - 60 x 18" x 1 3/4" Angle Braces	297.50	
		85 - 5/8 x 22" D.A. Bolts	17.00	
		325 - 5/8 x 14" Thrubolts	26.00	
		350 - 5/8 x 10" "	24.50	
		2000- 5/16 x 2 ¼" Sq. Washers	20.00	
		700 - ½ x 6" Carriage Bolts	21.00	
		1050 - 990 lead head pins	525.00	
		1050 - 13000 V pin Insulators	315.00	
		6 - sets 7500 V susp. Ins. & Clevises	18.00	
		56 - 615 Chance Anchors	126.00	
		4500' - 3/8" Galv. Guy Strand	72.00	
		100 - Pole Plates & x8	9.00	
		100 - Guy Hooks	9.00	
		100 - 1/2 x 4" lags	3.00	
		200 - 3 bolt 6" Guy clamps	40.00	
		14500 lbs #4 ACSR wire	3770.00	
		30 lbs. .05 x .3" flat armour	8.00	
		450 lbs. #6 al. tee wire	117.00	
			9644.00	
		Right of Way and Testing	300.00	
		Labor	2537.50	
			12481.50	
		10% Omissions & Contingencies	1248.15	
			13729.65	
		15% Engineering	2059.44	
		6½% labor for Insurance	164.94	
		2% Overhead	274.59	
		1% Interest	137.30	
			16365.92	

Defendant's Exhibit 55-18

Defendant's Exhibit 55-19 was received in evidence. It is in part as follows:

...Power Company COMPANY

W. O. No. [illegible]
Acct. No. [illegible]

WORK ORDER

Gross Expenditure 140,569.19

Office of Origin Aberdeen, S. D.

Date September 9th, 1929

GENERAL DESCRIPTION New outdoor substation at Aberdeen to handle 2 - 33 KV and 2 - 33 KV lines and 33 KV line from Aberdeen to Barnard and Aberdeen to Ipswich.

ADDITIONAL DETAIL DESCRIPTION The line between Aberdeen and Barnard and Ipswich is necessary to improve service to the towns on the Northern Power & Light Company and to enable us to carry some of the load on that system. The present substation is housed in a wooden structure and is not safe. Since we have the new spray pond on the north side of the plant we will be able to operate an outdoor substation. The substation will be so arranged that 66000 or 110,000 volt bays can be added later. Since it is imperative that we have this line working as soon as possible we are ordering the line material db case.

Since the bulk of the North Dakota Power & Light Company and the Northern Power & Light Company systems are 33 KV, we plan to build the substation and lines for that voltage but for the present will be operated at 22 KV as the lines in the vicinity are operating at that voltage. We plan to use a 1000 KVA transformer originally purchased for Milbridge for the transformation from 33 to 22 KV

EXPENDITURE

New Work Material & Exp.	118,479.79
Labor	14,089.00
Total	132,189.79
Labor Removing Old Work	
Maintenance	
Stores Dept. Chgs. 10%	
Gen. Office Supervision	13,510.00
Int. On Idle Investment	2,869.40
Gross Expenditure	140,569.19
Less Contributions	
Net Cost to Company	140,569.19

PROPERTY TO BE RETIRED

Original Cost

Return to Stock At Orig. Cost

Salvage Value

Depreciation

BENEFITS ACCRUING

Net Rev. $18,000

Per Years

Of Annual Cost 85

ADDITIONAL INVESTMENT NECESSARY AND WHICH IS TO BE CHARGED TO THE PERMANENT WORK ORDERS

Transformers $

Meters $

Budget Schedule No.

Budget Estimate $

Work Order No.

M. W. U. CO. Eng. Dept. Approved Date 9-26-29

RECEIVED SEP 28 1929

APPROVED 9/26/29

Estimated length of time required to complete work after approval

Date Completed Total Actual Amt., $

MATERIAL

Value on Hand

To Be Purchased

Total Material

Submitted by Thad Rigg Title Engr

Checked 9/11/29 By E K Abbott

Approved By

9/11/29 By M F [illegible] Vice President.

9-25-29 By J. G. [illegible] President.

Filed Feb 19 1948 Cor D Marker Clerk

13

(OVER)

741

Defendant's Exhibit 55-19.

WORK ORDER NO.

CLASSIFICATION OF MATERIAL	TOTAL	NEW WORK CONSTRUCTION	MAINTENANCE	LABOR COST REMOVING OLD WORK	ORIGINAL COST	PROPERTY TO BE RETIRED TO STOCK COST	SALVAGE VALUE	DEPRECIATION
1110 MAT & EXP		44,369.00						
LABOR		3,371.00						
TOTAL	47,740.00	47,740.00						
1182 MAT & EXP		18,435.90						
LABOR		5,800.00						
TOTAL	24,235.90	24,235.90						
1183 MAT & EXP		45,045100						
LABOR		4,000.00						
TOTAL	49,045.00	49,045.00						
MAT & EXP								
LABOR								
TOTAL								
MAT. & EXP								
LABOR								
TOTAL								
MAT & EXP								
LABOR								
TOTAL								
MAT & EXP								
LABOR								
TOTAL								
MAT & EXP								
LABOR								
TOTAL								
MAT & EXP								
LABOR								
TOTAL								
STORES DEPT CHGS. 10%								
INCIDENTALS	12,100.39	12,100.39						
GEN. OFFICE SUPERVISION	13,310.98	13,310.98						
INT. ON IDLE INVESTMENT	2,928.42	2,928.42						
TOTAL	148,349.19	148,349.19						

Defendant's Exhibit 55-19.

Form No. 73-4927

Final Return Sheet Auth. W.O. 404

Aberdeen Division. Description New outdoor substation at Aberdeen also 33 KV line Aberdeen to Barnard and 33 KV line from Aberdeen to Ipswich

Est. Cost 149,349.19 Date Started Oct. 1929 Acct. Chg'd. $

Act. Cost 152,126.60 Date Completed Sept. 1930 Acct. Chg'd. 1119 $

% Over—Under 21.95 Acct. Chg'd. 1122.1 $

Date Cleared Oct. 1930 Journal Entry J 10-66 Acct. Chg'd. 1123.1 $

(-777.21 [illegible] along

Item No.	ITEM	QUANTITY Est.	QUANTITY Act.	AMOUNT Estimate	AMOUNT Actual	DIFFERENCE Actual	DIFFERENCE Estimate	ACCT. CHG'D.
1	50' poles	16	21	256 00	336 00	27	19.14	1122.1
2	45' poles	28	88	406 00	946 00	60	15.14	1122.1
3	40' poles	346	485	5,190 00	4,447 50	922	13.51	1122.1
4	35' poles	510	596	4,173 00	3,677 00	796	12.95	1122.1
5	10' cross arms	1106	1619	1,216 00	2,796 84	1619	1.578	1122.1
6	7' cross arms	296	46	320 00	46 84	92	1.161	1122.1
7	72" cross arms braces	1106	1206	996 00	981 84	1255	786	1122.1
8	28" cross arms braces	646	646	72 48	96 30	3319	.043	1122.1
9	Heavy pins and spur washers	3296	3296	2,006 00	3,276 86	5101	.644	1122.1
10	Light pins and spur washers	96	96	16 00	466 66	1836		1122.1
11	Anchors	166	166	466 00	766 66	917		1122.1
12	Anchors guys	36	36	306 00				1122.1
13	Anchor rods	36	96	96 00	66 66	96		1122.1
14	3/8" galvanized guy wire	16000	26000	246 00	396 66	30744		1122.1
15	Guy hooks	300	396	96 00	96 96	700		1122.1
16	Strain plates	300	396	96 00	66 00	670		1122.1
17	Bayonets	66	77	66 00	106 66	77		1122.1
18	Static clamps	1106	1296	116 00	66 16	1082		1122.1
19	11" machine bolts	1106	1296	116 00	96 66	996	.851	1122.1
20	14" machine bolts	1000	1171	116 00	116 66	1171	.994	1122.1
21	18" D.A. bolts	300	396	96 00	66 66	913	.69	1122.1
22	1/2 X 4 1/2 lag bolts	600	1296	16 00	46 16	1109		1122.1
23	1/2 X 6" carriage bolts	2200	2296	66 00	966 66	3960	.867	1122.1
24	5/8 X 4 1/2 carriage bolts	600	396	16 00	66 66	1334	.833	1122.1
25	Spur washers	3000	3296	106 00	766 66	5978	.677	1122.1
26	1/4" S. and M. strand	2000000	2296000	66 00	6,996 66	111000	.006	1122.1
27	Eyelets	106	96	66 00	96 66	261		1122.1
28	S bolt & 6" clamps	600	1296	106 00	966 66	1465		1122.1
29	5/8 X 6" machine bolts	1106	1296	116 00	166 66	1444	.886	1122.1
30	5/8 X 16" machine bolts	96	96	6 00	966 66	2516	.111	1122.1
31	46 KV insulator	2000	2296	2,466 00	2,966 66	6296	1.374	1122.1
32	S.O. A.C.S.R.	1400000	1296000	2,306 00	2,466 66	4000	.286	1122.1
33	4 unit strain insulators	166	296	1,006 00	1,966 66	196	9.32	1122.1
34	Aluminum strain clamp	166	296	966	466 66	917		1122.1
35	.06 X .5 alumi armour	1000	2000	966 00	966 66	1521		1122.1
36	#4 alumi tie wire	1000	2000	966 00	966 66	1086		1122.1
37	3 pole 50,000 V air break	No. 3		966 00	966 66	1		1122.1
38	Aberdeen substation structure	1	1	2,966 00	12,966 66	X		1119
39	KV oil circuit brk.	3	3	2,466 00	2,966 66	X		1119
40	33 KV potential trans. panel	1	1	1,006 00	1,966 66	X		1119
41	33 KV C.T., 33/50 to 5 ring	3	3	466 00	966 66	X		1119
42	33 KV current transformer	3	3	2,006 00	2,466 19			1119
43	33 KV potential transformer	3	3	1,466 00	2,466 66			1119
44	600 MCM S.C. cable	2000	1,966	66 00	966 66	X		1119
45	Control cable	2000	1,966	966 00	966 66	X		1119
46	33 KV connectors	3	3	2,006 00	1,966 66			1119
47	Conduit and fittings			966 00	966 66	X		1119
48	Piping			966 00	966 19	X		1119
49	Installation			1,006 00	966 66	X		1119
50	Control panels and instruments			1,006 00	1,966 66	X		1119

Defendant's Exhibit 55-19.

Form No. 78—4-37

Return Sheet — Auth. W.O. 404 Con't'd.

Division. Description

Est. Cost — Date Started — Acct. Chg'd. — $

Act. Cost — Date Completed — Acct. Chg'd. — $

% Over—Under — Acct. Chg'd. — $

Date Cleared — Journal Entry — Acct. Chg'd. — $

Item No.	ITEM	QUANTITY Est.	QUANTITY Act.	AMOUNT Estimate	AMOUNT Actual	DIFFERENCE	ACCT. CHG'D.
X 51	Substation structure - Barnard		OK	1,809 00	1,854 80	X	1119
X 52	50 KVA 22,000 - 6,600 trans-		OK				
	formers	3		1,350 00	1,718 80	X	1119
X 53	50 amp regulators	2	✓	2,500 00	320 00		1119
X 54	Foundation		✓	250 00	250 75	X	1119
X 55	6,600 V reclosing switch	1	✓	1,700 00	1,786 50	X	1119
X 56	25 KVA 6,600 - 2,300 V trans-						
	formers	3	✓	600 00	720 00	X	1119
57	Labor on structures		✓	5,800 00	1,682 42	<	1122.1
58	Labor on conductors		✓	4,000 00	5,000 15	<	1122.1
59	Labor on substation		✓	3,500 00	3,171 97		1119
60	Incidentals		✓	12,100 00	5,015 46		Overheads
61	Supervision		✓	13,310 00	5,500 00	12.71%	Overheads
62	Interest		✓	2,000 42	5,000 00		Overheads
				110,340	102,125 60	(38,777 41)	

Summary

	Expenditures	Percentage	Overheads	Total
Acct 1122.1	37,525.00	25 47%	9,005 16	46,530 16
Acct 1123.2	33,150 06	24 24	12,000 40	44,000 24
Acct 1119	56,031.84	38 27	17,444 44	73,476 28
	146,536.10	100 00	38,387.00	102,125 60

40.97%

Design work Barnard — 60 455 15 — 86 733 % — 49,916.52

9 487 13 — 13 267 %

69 709 82

Maintenance Design started on 1936 & 5-37

	Under Sub	Barnard Sub	Total
Labor	5352.64	818 76	6171 37
Overheads	1781.78	1807 08	13620 86
	17166 32	2 625 84	19792 23

560.98
533.19
1093.17

50

Defendant's Exhibit 55-19.

Defendant's Exhibit 55-20 was received in evidence. It is in part as follows:

M. W. Stand. 103 Rev.—5-29.

NORTHWESTERN PUBLIC SERVICE COMPANY

W. O. No. 420

Acct. No.

WORK ORDER

Schedule #382

GENERAL DESCRIPTION Extend 33 KV circuit from Highmore to Wolsey and build 33 KV line from Blunt to Gettysburg and tie in substation at Gettysburg.

Includes 66 KV work at Highmore from west to Blunt.

ADDITIONAL DETAIL DESCRIPTION This will tie our system in with the Northern Power & Light Company at Gettysburg and will make two way service available to all towns between Bowdle and Wolsey. In addition to the net revenue shown on this work order for Northwestern there will be a direct saving of $5000 per year to the Northern Power & Light Company in operating labor at Blunt and Gettysburg plants.

OPERATING DEPT. M.W. RECEIVED OCT 11 1929 APPROVED 10/11

Filed Feb 19, 1948
Roy D Marker Clerk

ADDITIONAL INVESTMENT NECESSARY AND WHICH IS TO BE CHARGED TO THE PERMANENT WORK ORDERS

TRANSFORMERS $

METERS $

BUDGET BOARDING NO.

ESTIMATED LENGTH OF TIME REQUIRED TO COMPLETE WORK AFTER APPROVAL 6 Months

DATE COMPLETED TOTAL ACTUAL AMT. $

SUBMITTED BY Title

CHECKED 10/5/29 By E K Gellert

APPROVED 10/4/29 By C V Linnett

APPROVED 10/4/29 By M L Bell VICE PRESIDENT.

APPROVED 10-9-29 By T J Parker PRESIDENT.

10-12-29 Auth.

(OVER)

Gross Expenditure 114,138.10

Office of Origin Huron, S. D.

Date October 3rd, 1929

EXPENDITURE

New Work Material & Exp	88,751.56
Labor	14,700.00
Total	103,451.56
Labor Removing Old Work	
Maintenance	
Stores Dept. Chgs. 10%	
Gen. Office Supervision	10,345.15
Int. On Idle Investment	341.39
Gross Expenditure	114,138.10
Less Contributions	
Net Cost to Company	114,138.10

PROPERTY TO BE RETIRED

Original Cost	
Deduct for Stock or Orig. Cost	
Salvage Value	
Depreciation	

BENEFITS ACCRUING

Increased Net Rev Per Year	12,000
% Incr. Rev. to Company Cost	11%
Decreased Exp. Per Year	
% Decr. Exp. to Company Cost	

MATERIAL

Value on Hand	$0000.00
To Be Purchased	88,751.56
Total Material	88,751.56

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Defendant's Exhibit 55-20.

WORK ORDER NO._____

CLASSIFICATION OF MATERIAL		TOTAL	NEW WORK CONSTRUCTION	MAINTENANCE	LABOR COST REMOVING OLD WORK	PROPERTY TO BE RETIRED ORIGINAL COST	RETURN TO STOCK AT ORIG. COST	SALVAGE VALUE	DEPRECIATION
1122.1	MAT & EXP		18,301.30						
	LABOR		7,500.00						
	TOTAL	25,801.30	25,801.30						
1123.1	MAT & EXP		47,374.00						
	LABOR		5,000.00						
	TOTAL	52,374.00	52,374.00						
	MAT & EXP		18,850.00						
	LABOR		1,500.00						
	TOTAL	20,350.00	20,350.00						
	MAT & EXP								
	LABOR								
	TOTAL								
	MAT & EXP								
	LABOR								
	TOTAL								
	MAT & EXP								
	LABOR								
	TOTAL								
	MAT & EXP								
	LABOR								
	TOTAL								
	MAT & EXP								
	LABOR								
	TOTAL								
	MAT & EXP								
	LABOR								
	TOTAL								
	STORES DEPT CHGS. 10%								
	INCIDENTALS	4,926.26	4,926.26						
	GEN. OFFICE SUPERVISION	10,345.15	10,345.15						
	INT. ON IDLE INVESTMENT	341.39	341.39						
	TOTAL	114,138.10	114,138.10						

Defendant's Exhibit 55-20.

Form No. 78-4-27

Final Return Sheet — Auth. **W.O. 420**

Hunson Division. Description **33 KV circuit Highmore to Harrold and line Hlunt to Gettysburg and substation at Gettysburg**

Est. Cost **114,138.10** Date Start **Nov.1929** Acct. Chg'd. $

Act. Cost **125,545.42** Date Compl. **Sept.1930** Acct. Chg'd. **1119** $ **24,220.26**

% Over Under **9.99** Acct. Chg'd. **1122.1** $ **25,252.68**

Date Cleared **Oct. 1930** Journal Entry **J 10-66** Acct. Chg'd. **1123.1** $ **73,072.48**

Item No	ITEM	QUANTITY Est.	QUANTITY Act.	AMOUNT Estimate	AMOUNT Actual	DIFFERENCE	ACCT. CHG'D.
1	30' poles	40	28	250 00	156 00		1122.1
2	35' poles	700	650	8,575 00	8,015 45		1122.1
3	40' poles	50	40	750 00	581 40		1122.1
4	45' poles	20	15	330 00	250 60		1122.1
5	50' poles	10	9	180 00	174 00		1122.1
6	10' cross arms	400	1251	480 00	2,356 04		1122.1
7	7' cross arms	810		810 00			1122.1
8	8' cross arms	320	248	352 00	416 20		1122.1
9	18" D.A. bolts	300	572	54 00	85 80		1122.1
10	12" machine bolts	1100	44	121 00	3 45		1122.1
11	14" machine bolts	400	826	52 00	74 34		1122.1
12	Pole top pins and eyebolts	810		1,215 00	1 08		1122.1
13	60" pole top pin and eyebolt	1530	2222	1,530 00	1,666 40		1122.1
14	1/2 X 6" carriage bolts	5060	2482	91 80	88 55		1122.1
15	10" machine bolts	2400	1218	84 00	90 88		1122.1
16	Steel pins 1 3/8"	2220	1564	1,974 00	856 8 1		1122.1
17	Steel pins 1"	960	1748	288 00	950 60		1122.1
18	Washers	10000	514	200 00	14 39		1122.1
19	Anchors	150	154	330 00	387 86		1122.1
20	Anchor legs and 8' rods	50	46	250 00	41 38		1122.1
21	3/8" guy strand	25000	12645	375 00	464 24		1122.1
22	Strain plates	500	117	24 00	10 01		1122.1
23	Guy hooks	300	474	2 4 00	34 37		1122.1
24	3 bolt clamps	300	427	24 00	78 05		1122.1
25	1/2 X 4" lags	300	740	7 50	22 20		1122.1
26	#4 A.C.S.R.	130000	82940	3,250 00	5,128 07		1123.1
27	2/0 A.C.S.R.	150000	85644	34,500 00	37,861 35		1123.1
28	#4 tie wire	1500	1841	450 00	519 38		1123.1
29	alumi armour wire	500	252	150 00	87 84		1123.1
30	45 KV insulators	3630	5708	7,986 00	11,562 61		1123.1
31	15 KV insulators	960	894	288 00	99 06		1123.1
32	Strain units	100	107	750 00	742 64		1123.1
33	6,600 V disconnects	2		50 00			1119
34	33 KV air break	2		600 00			1119
35	Substation structure	1		2,000 00	1,284 70 X		1119
36	2,300 V meter equip. to switch	2		2,000 00	3,328 24 X		1119
37	225 K.V.A. transformers 12000- 2300	2		9,000 00	8,928 26 X		1119
38	100 amp outdoor regulator	2		2,200 00	2,219 98 X		1119
39	Substation fence	1		300 00			1119
40	Substation foundations	1		500 00	314 70 X		1119
41	Arrestors	2		2,000 00	2,141 24 X		1119
42	Labor on structure			7,500 00	6,851 45		1122.1
43	Labor on conductors			5,000 00	4,889 95		1123.1
44	Labor on substation			1,500 00	1,796 17		1119
45	Incidentals			4,824 20	9,702 20		Overheads
46	Supervision			10,247 15	9,332 48		Overheads
47	Interest			341 45	2,230 41		Overheads
				114,138 10	125,545 42	11,407 32	

See page #2 for summary

Defendant's Exhibit 55-29.

Return Sheet Auth. W. O. 497 Cont'd.

Division. Description

Est. Cost Date Started Acct. Chg'd. $

Act. Cost Date Completed Acct. Chg'd. $

% Over—Under Acct. Chg'd. $

Date Cleared Journal Entry Acct. Chg'd. $

Item No.	ITEM	QUANTITY Est.	QUANTITY Act.	AMOUNT Estimate	AMOUNT Actual	DIFFERENCE	ACCT. CHG'D.
		[illegible]					
		Summary					
	Expenditure	[illegible]		Overheads	Total		
Acct	1122.1	28	28	4,706	28,262		FIX
Acct	1122.1	28	28	12,281	75,072		Cont
Acct	1119	19	28	4,105	24,280		sub
		100	100%	21,092	125,545		

23466 / 6691 = 39.2%

16126

15000 / 4698 = 3.3%

6427.8

Defendant's Exhibit 55-20.

Defendant's Exhibit 55-21 was received in evidence. It is in part as follows:

M. W. Stand. 103 Rev.—5-36

Cleared

WORK ORDER

INVESTMENT

W.O. No. 1081
Budget Sched. No. 30
Acct. No. 1119

NORTHWESTERN PUBLIC SERVICE Company
Date 1-22-48 Location Aberdeen Utility Electric

Description

Installation of a 3 phase, 3000 KVA, 33000 to 22000 or 38000 volt, auto-transformer at Aberdeen substation to tie in between our 33 KV system and the Northern Power & Light Company 22 KV system. This transformer will be built for future 33 to 38 KV operation as the lines of the Northern Power & Light Company will ultimately be cut over to 38 KV.

Filed Feb 19 1948
Roy D Marker
Clerk

Dkt 4055-21
AC

See Retirement / Investment Work Order No. 1082 R

Date Work To Be Started April 1, 1948
Date Work To Be Finished May 1, 1948

ESTIMATED COST OF WORK TO BE APPROVED	Amount
Material To Be Purchased	5800.00
Material To Be Used From Stock	
Salvage Material To Be Used	
Transferred Equipment	
Labor	100.00
5% contingencies	290.00
Total	5890.00
Stores Department Charge 10%	
General Office Supervision	556.00
Interest On Idle Investment	85.00
Total Cost of Work To Be Approved	6171.00

PERMANENT WORK ORDERS	Amount
Transformers and Installation	
Meters and Installation	
Services	
Short Extensions	
Total Permanent Work Orders	
TOTAL COST OF NEW WORK	6171.00
Less: Salvage To Be Used	
Transferred Equipment	
Contributions	
Refundable Deposits	
Permanent Work Orders	
TOTAL	
TOTAL COST TO BE CHARGED TO NEW WORK	6171.00
Submitted By E K Gilbert	
Checked By E K Gilbert	1-27-48
Checked By	
Checked By	1-27-48

BENEFITS ACCRUING FROM NEW WORK	Amount
Increased Gross Revenue Per Year	None
% Increased Gross Revenue To Company Cost	
Increased Net Revenue Per Year	
% Increased Net Revenue To Company Cost	
Decreased Expense Per Year	
% Decreased Expense To Company Cost	

ESTIMATED RETIREMENT CHARGE	Amount
Original Cost of Property Retired	
(How Computed)	
Cost of Removing Property Retired	
TOTAL	
Salvaged Mat.—Junk Value	
Salvaged Mat.—Ret. to Stock	
TOTAL SALVAGE MATERIAL	
NET RETIREMENT CHARGE	

Approved	E K Gilbert	1-27-48
Approved	W D Green	1-26-48
Approved	L T Boettcher	1-26-48
Approved	C J Stibbe	1-25-48
Approved		
Approved	T C Power	1-27-48
Approved	O E Sanders	1-29-48
Authorized	J W Elliott	2/3/48

*Investment-Retirement-Maintenance-Suspense

(Over)

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Defendant's Exhibit 55-21.

257

DETAILED ESTIMATE OF COST (Itemize Labor & Material Below)

Account Number	Items	Size	Quantity	Cost Per Unit	Amount
1119	1 - Transformer with air blast cooling, etc.	3000 KVA	1	5200.00	5200.00
"	2 - Labor unloading and installed				100.00
"	3 - 5% contingencies				260.00
					5560.00
"	4 - 10% G. O. supervision				556.00
"	5 - ½ of 1% per month interest				55.60
					6171.60

TOTAL COST OF NEW WORK—BY MONTHS		
Month		Estimate
January	19	
February	19	
March	19	
April	19 32	3085.80
May	19 32	3085.80
June	19	
July	19	
August	19	
September	19	
October	19	
November	19	
December	19	
TOTAL		$ 6171.60

Reason Why Work Should Be Done:

By installing this transformer at Aberdeen and moving the present transformer to Mobridge to increase the 38 to 22 KV lie in capacity there, we estimate that we can use approximately 2,500,000 KWH more of Beulah current on Northwestern Public Service Company in 1932 than we did in 1931. This will make a saving of approximately ½¢ per KWH after deducting all losses.

18

Defendant's Exhibit 55-21.

Final Return Sheet

W. O. No. 1081

Aberdeen Division Description Installation of 3000 KVA Auto Transfor-
mer in Aberdeen Sub Station

Est. Cost 6171.60 Date Started 4/1/32 Acct. Chg'd. $

Act. Cost 6219.60 Date Completed 5/21/32 Acct. Chg'd. $

% Over—Under .008 Acct. Chg'd. 1119 $ 6219.60

Date Closed July 1932 Journal Entry J-62 Acct. Chg'd $

ACCOUNT NO.	ITEM NO.	ITEM	QUANTITY EST.	QUANTITY ACT.	AMOUNT ESTIMATE	AMOUNT ACTUAL	DIFFERENCE QUAN.	DIFFERENCE AMT.
1118	1	Transformer & air blast cooling,						
		3000 KVA	1	1	5200.00	5165.00		(35.00)
1119	2	Labor unloading and installing			100.00	138.32		[illegible]
	3	Contingencies			290.00	116.00		[illegible]
						[illegible]		[illegible]
					5890.00	[illegible]		[illegible]
		Salvage			556.00	807.64		251.64
		Setout			55.60	18.43		(37.17)
					6171.60	6219.60		48.00

Defendant's Exhibit 55-21.

A. (Con't) Now, I believe I gave you the principal ones covering the value as to the insufficiency of this contract. All of these other work orders enter into these very facilities at some time or another.

Q. I am speaking now of your Exhibit 88 and 88-A. Have you produced everything you will need in order to talk about the figures shown on those tabulations?

A. I think I better give you all of these in that event.

Q. Do you want anything except from what is technically called a "work order"?

A. I would not like to restrict it to that. I don't know right now that I would need anything else, but I don't like to cut off my sources of information.

Q. Referring to the folder that you hand me, do you want one or all of those papers put in evidence to use?

A. All of the information in this folder appears to apply to the facilities that haven't been included as part of the interchange facilities. There are substation items in Aberdeen that refer to specific 32,000 volts. There are portions of transmission lines east of Highmore.

Q. Then you don't want those so far as Exhibit 88 is concerned?

A. Unless you want to throw the figures in as part of the facilities.

Q. I want to get at these in the order in which you made them. Is there anything more in that folder you want to submit to the Court in support of these tabulations, 88 and 88-A?

A. I would be inclined to let these two folders go into the record.

Q. The whole of them? A. Yes.

Q. Do you want all of this correspondence?

A. I haven't time to read it now so I don't want to limit myself.

Defendant's Exhibit 55-22 was received in evidence. It consists of miscellaneous correspondence in 1930 and 1931 relating to work order 420 and the construction work thereunder.

Defendant's Exhibit 55-23 was received in evidence and is in part as follows:

Form 4P-4M 4-3-28

RETIREMENT APPLICATION

W.C. 405R

Northwestern Public Service Company

Division Aberdeen Application No. _____

Department Electric Date Sept. 9th, 1929

Application is made to remove the following property from Fixed Capital Account.

General Description: Removing part of the 6600 volt line between Aberdeen and Barnard and removing old wooden substation structure at Aberdeen.

Details on Back of this Sheet

Reason for Retirement Changes being made in connection with the line to Barnard and Ipswich make these changes necessary.

Will the property to be retired be replaced? Yes If so, an authorization covering the new work must be sent with this application.

(Application No.
Authorization)
(Authorization No.

Estimated Cost

Cost of Retirement (Labor, etc.)	$2000.00
Less Salvage of Material	4472.00
Net Retirement Cost	$2472.00 * Red

Requested by _____

Recommended by _____

_____

Approved by _____
Treasurer.

Approved and Authorized by _____
President.

Cancelled _____

Completed _____

Closed _____

Retired from Capital Account

_____ 19___

_____
Treasurer.

Defendant's Exhibit 55-23

2763

INSTALLED COST OF PROPERTY TO BE RETIRED (STATE IF ESTIMATED)

Note: Include Costs of Materials, Labor, Freight, Incidentals, Supervision, Overheads, Etc. Original and Unit Costs to be filled in by General Office.

Acct. No.	ITEM	Quantity	Unit Cost	Original Cost	Estimated Salvage
11281	30' - 6" treated poles	100	8.14	814 00	600 00
	Pole top pins 24"	322	.78	251 16	80 00
	35' - 6" treated poles	35	10.79	377 50	150 00
11281	15 KV insulators	262	.31	81 22	65 00
	#2 ACSR	4500	.2245	1012 50	900 00
	#4 "	6000	.166	996 00	1200 00
1119	Lumber from substation			256 70	100 00
	45 KV gang operated 45° disconnects	5	45.35	226 80	1000 00
	46 KV knife switches 45° "	6	61.32	371 92	300 00
	Buss supports	15		25 00	15 00
	Buss copper			1000 00	50 00
	Strain insulators - 3 unit	12	1.25	10 00	24 00
	Selector switch 2300 V	1		30 00	15 00
	Foundations			374 89	
				5419 46	
	Installation 5%			270 97	
				5690 43	
	Supervision & contingencies 5%			284 52	
				5974 95	
	Indirect Overheads 25%			1493 73	
	If necessary use additional sheets				
	TOTAL			7468 68	4472 00

Details of Estimate Cost of Retirement

Labor retiring structures	750.00
Labor retiring conductors	500.00
Labor retiring sub equipment	750.00
	2000.00

To be filled in by General Office		
Total credit to Fixed Capital Account		7468.68
Cost of Retirement	7050.00	
Less Salvage	4472.00	2472.00
Net Charge to Renewal & Replacement Reserve (To be filled in by General Office)		4996.68

Note—If materials are shipped to stores freight is to be charged to this application.
If materials are shipped to another job freight is chargeable to new job.

Defendant's Exhibit 55-23.

765

Final Return Sheet Retirement W.O. No. [redacted] District [redacted]

Description [redacted] of material on Skeleton-Bennett line and [redacted] substation

Date Cleared [redacted] Debit Journal No.

Total Prop. Ret (Memo Only)	Res. from Earnings Acct. 85A	Res. from Appraisals Acct. 85B	Capital Surplus from Appraisals Acct. 80A	Res from Earnings Acct. 85A (Reti Cost Only)	Retire work Order Salvage Value	Total Debit
[redacted]	[redacted]			1,[redacted]	10,[redacted]	7,[redacted]

Credit

Acct. No.	Total Prop. Retired (Memo Only)	Prop. of App. Used for Securities	Prop. of App. Not Used for Securities	Additions Since App. used for Sec.	Res. from Earnings a/c 85A (Sal Val Only)	Retire work Order Retire Cost	Total Credit
[redacted]	[redacted]			[redacted]			
[redacted]	[redacted]			[redacted]			
[redacted]	[redacted]			[redacted]			
	[redacted]			[redacted]	[redacted]	[redacted]	7,[redacted]

Item	Quantity Est.	Quantity Act	Original Cost Est.	Original Cost Act.	Acct. to credit	Salvage Value	Retire Cost
[redacted]	[redacted]	[redacted]	[redacted]	2,[redacted]	1132.1	2,[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	1,[redacted]		[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	1132.1	[redacted]	
[redacted]	[redacted]	[redacted]	1,[redacted]	1,[redacted]		2,[redacted]	
[redacted]	[redacted]	[redacted]	1,[redacted]	[redacted]		1,[redacted]	
[redacted]			[redacted]	[redacted]	1132		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	
[redacted]			[redacted]	[redacted]			
[redacted]			[redacted]	[redacted]	1132.1		
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	
[redacted]				[redacted]		[redacted]	

53

792

Defendant's Exhibit 55-23.

Final Return Sheet Retirement W.O. No. [illegible] R.Post. District [illegible]

Description [illegible]

Date Cleared Journal No.

Total Prop. Ret Memo Only	Res. from Earnings Acct. 85A	Res. from Appraisals Acct. 85B	Capital Surplus from Appraisals Acct. 80A	Res from Earnings Acct. 86A (Reti Cost Only	Retire work Order Salvage Value	Retire work Order Retire Cost

Credit

Acct. No.	Total Prop. Retired (Memo Only)	Prop. of App. Used for Securities	Prop. of App. Not Used for Securities	Additions Since App. Used for Sec.	Res. from Earnings a/c 86A (Sal Val Only)	Retire work Order Retire Cost	Retire work Order Retire Cost

ITEM	Quantity Est.	Quantity Act	Original Cost Est.	Original Cost Act.	Acct. to credit	Salvage Value	Retire Cost
Messenger		[illegible]		11[illegible]	11[illegible]	[illegible]	
8 wire rack		1		[illegible]		[illegible]	
6' X arms		7		[illegible]		[illegible]	
806 insulators		19		[illegible]		[illegible]	
Shims		5		[illegible]			
40' poles		15		[illegible]		[illegible]	
50' poles		3		[illegible]		[illegible]	
Junk aluminum		500#		[illegible]	11[illegible]	[illegible]	
N.P. wire		2100#		[illegible]		[illegible]	
66000V insulators		[illegible] 42		1[illegible]		11	1[illegible]
Glass insulators		27		[illegible]			
St - Howlets		47		[illegible]		[illegible]	
G.E. 150 A cutout		2		[illegible]	1119	[illegible]	
2300 lighting arresters		1		1[illegible]		[illegible]	
2# 1/0 797 tape K.B. current transformers		2		[illegible]		[illegible]	
	5,419	44	11,21[illegible]	1[illegible]		1[illegible]	
Installation 16.60%(Estimate was 5%)	[illegible]	[illegible]	1,[illegible]	[illegible]			
	6,[illegible]	[illegible]	13,07[illegible]	[illegible]			
Omission & contingencies 10.53%(estimate was 5%)	[illegible]		1,[illegible]	[illegible]			
	9,07[illegible]	[illegible]	14,4[illegible]	[illegible]			
Indirect overheads 9.61%(estimate was 20%)	1,[illegible]	[illegible]	1,[illegible]	[illegible]			
	7,[illegible]	[illegible]	15,[illegible]	[illegible]		1[illegible]	1,[illegible]

Note:
Original cost taken from W.O.#49 and [illegible] also old work order on Aberdeen substation.

34

769

Defendant's Exhibit 55-23.

Defendant's Exhibit 55-24 was received in evidence. It is in part as follows:

FORM NO 75—SM-1-39

Final Return Sheet

Aberdeen, S. D. Division

W. O. No. 2470

Description Install Ground-Fault Neutralizer (Peterson Coil) together with associated tap-changing protection and by-pass - Aberdeen Sub Station.

Est. Cost 6465.68 Date Started Mar 1944 Acct. Chg'd $

Act. Cost 7269.85 Date Completed Apr 1944 Acct. Chg'd Sub 3A 1143 $ 7269.85

% Over—Under 12.4375 Acct. Chg'd $

Date Cleared May 1944 Journal Entry 5-28 Acct. Chg'd $

ACCOUNT NO.	ITEM NO.	ITEM	QUANTITY EST.	QUANTITY ACT.	AMOUNT ESTIMATE	AMOUNT ACTUAL	DIFFERENCE QUAN.	DIFFERENCE AMT.
1143	1	34.5 Neutralizer, 60/30 Amp. Protection & By-pass Equipment, Remote Tap Changer, complete	1	1	5701.00	5725.00	-	24.00
	2	Foundation & Footings			150.00	353.16		203.16
	3	Control Cable, Conduit, Wiring			150.00	363.28		213.28
	4	Stores Expense			15.00	26.13		11.13
	5	Installation Labor			200.00	401.41		201.41
	6	Transportation			—	8.20		8.20
	7	Engineering & Supervision			25.00	31.55		6.55
		TOTAL			6241.00	6908.73	703.71	667.73
		Admin & Gen'l Expense			224.68	266.14		
					6465.68	7269.85		804.17

Filed Sept 19, 1944
Roy S Marker clerk

Work Order Completed and Ready for Service

Signature Date

Private R.W.

Public R.W.

Tax Maps

Engineering

Property

Accounting

Signed [illegible] Dept Head Date

Signed [illegible] Chief Clerk 5-10-44 Date

Signed A R Morey Manager 5-11-44 Date

35 a3

WORK ORDER

INVESTMENT

W. O. No. 2470
Budget Sched. No. 75A
Acct. No. 1143
Franchise Exp. Date 1961

NORTHWESTERN PUBLIC SERVICE COMPANY Company
Date 11/4/43 Location Aberdeen Utility Electric

Description

Install ground-fault neutralizer (Peterson Coil) together with associated tap-changing, protective and by-pass equipment at Aberdeen substation on 33 KV transmission

This W.O. covers Aberdeen installation only; see W.O. #2471 [illegible] investment. Construction approved by W.P.B., serial #032961.

RECORDED
NOV 11 1943
BUDGET & [illegible] DEPT.

Date Work To Be Started 2/15/44 Date Work To Be Finished 3/[illegible]/44

Retirement
Sep
Investment
Work Order No. None

Proposed Expenditures—Budget Schedule No. 75A $ —
Previous Authorizations $ —
This Authorization 6,465.68 $ 6,465.68

ESTIMATED COST OF WORK TO BE APPROVED	AMOUNT
1. Material To Be Purchased	5,851.00
2. Material To Be Used From Stock	150.00
3. Salvage Material To Be Used	
4. Transferred Equipment	
5. Labor	200.00
6. Engineering & Supervision	25.00
7. Total	6,226.00
8. Stores Department Charge 10 % on 150.00	15.00
9. General Office Supervision 3.6 %	224.68
10. Interest On Idle Investment %	
11. Total Cost of Work To Be Approved	6,465.68
PERMANENT WORK ORDERS	AMOUNT
12. Transformers and Installation	
13. Meters and Installation	
14. Services	
15. Short Extensions	
16.	
17.	
18. Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Pool Investment @ $ Per KW	
21. TOTAL INVESTMENT	6,465.68
22. Less: Salvage To Be Used	—
23. Transferred Equipment	—
24. Contributions	—
25. Refundable Deposits	—
26. Permanent Work Orders	—
27.	—
28. Total —	
29. Total Cash Required for New Work to be Authorized	6,465.68
Submitted By J. F. Buckmaster	DATE 11-5-43
Checked By	
Checked By E H Kingdon	11-5-43
Checked By	

BENEFITS ACCRUING FROM NEW WORK	AMOUNT
Increased Gross Revenue Per Year	—
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	1,500.00
% Decreased Expense To Cost of New Work	23.2
ESTIMATED RETIREMENT CHARGE	AMOUNT
Original Cost of Property Removed	
(How Computed and Date Installed)	
Less: Transferred Equipment	
Original Cost of Property Retired	
Cost of Removing Property Retired	
TOTAL	
Salvage Mat.—Junk Value	—
Salvage Mat.—Ret. to Stock	—
	—
TOTAL SALVAGE MATERIAL	—
NET RETIREMENT CHARGE	

	DATE
Approved J. F. Buckmaster	11-5-43
Approved E. T. Swanstrom	11/9/43
Approved	
Approved	
Approved CONCURRED IN BY MIDDLE WEST SERVICE COMPANY	
Approved BY	
Approved	
Authorized	11/9/43

*Investment-Retirement-Maintenance-Operating-Suspense

(OVER)

773

Defendant's Exhibit 55-24.

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below)

ACCOUNT NUMBER	ITEMS	SIZE	QUANTITY	COST PER UNIT	AMOUNT
1143 /	34.5 KV Neutralizer, 60/30 amperes, protective and by-pass equipment, remote tap-changer, complete		1	5,701.00	5,701.00
2	Foundation and footings				150.00
3	Control cable, conduit, wiring				150.00
4	Stores expense, 10% on $150.00				15.00
5	Installation labor				200.00
6	Transportation				
	Engineering and supervision				25.00
	3.6% Admin. & Gen'l Exp.				224.68
					6,465.68

TOTAL CASH REQUIRED FOR NEW WORK—BY MONTHS	
MONTH	ESTIMATE
January 19	
February 19 44	5,851.00
March 19	614.68
April 19	
May 19	
June 19	
July 19	
August 19	
September 19	
October 19	
November 19	
December 19	
TOTAL	6,465.68

Reason Why Work Should Be Done:

If "% Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

Installation will greatly reduce line disturbance and interruptions caused by phase-to-ground flashOvers and arcs. Anticipated savings in damage to equipment and reduced stand-by operation of Diesel plants should pay for installation in five years or less, without putting value on improved service.

23

7455

Defendant's Exhibit 55-24.

Defendant's Exhibit 55-25 was received in evidence. It is in part as follows:

K

Ofdt 4 55-25

FINAL RETURN SHEET Retirement W. O. No. 2069R District Ipswich

Description Retire 2 miles of 38 KV line at Ipswich

Date Closed Aug 1941 Journal No. 8-30

DEBIT

Total Property Retired Memo Only	Reserve from Earnings Account 88-1	Reserve from Appropriation Account 88-2	Capital Surplus from Appropriation Acct 80-1	Reserve from Retirement Acct. 88-1 Retirement cost only	Retiring Work Order Salvage Value	Total Debit

CREDIT

Acct No	Total Property Retired Memo Only	Proportion of Appraisal Used for Securities	Proportion of Appraisal not used for Securities	Additions since Appraisal used for Securities	Reserve from Earnings Acct 88-1 Bal. Val. Only	Retirement Work Order Retirement Cost	Total Credit
Line 2 1145	2690.43						
1146	3135.45				3375.72	358.47	2808.63
	5825.88						

Item	ITEM	Quantity Estimated	Quantity Actual	Original Cost Estimated	Original Cost Actual	Acct to Credit	Salvage Est.	Salvage Act.	Retirement Cost Est.	Retirement Cost Act.
1	40' Poles	19	18	262.43	249.42	1145				
2	35' Poles	23	22	299.66	285.67	"				
3	50' Poles	3	3	59.79	59.79	"				
4	45' Poles	17	19	257.51	287.81	"				
5	30' Poles	4	4	51.94	51.94	"				
6	4x5x10' X Arms	63	62	174.26	191.99	"				
7	4x5x8' X arms	23	27	36.75	43.15	"				
8	1 3/8" L.H. Pins	173	254	111.07	163.07	"				
9	45 KV Pin type insulators	251	252	344.89	346.25	1146				
10	45 KV Strain units	24	27	223.68	251.64	"				
11	Head Guys	21	9	45.15	19.35	1145				
12	Cross Guys	2	2	14.94	14.94	"				
13	Single down guys	7	8	37.73	43.12	"				
14	Double down guys	5	7	33.00	46.20	"				
15	Triple down guys	2	4	16.40	32.80	"				
16	6"x8"x20' X arms	2	2	19.20	19.20	2				
17	2/0 ACSR	21016'	7017'	1790.49	1618.12	1146				
18	1/4" Static Wire	1329'	7897'	97.43	67.91	"				
	Total			4875.26	3771.02					
19	Labor poles									
20	Labor conductors									
21	Transportation									
21A	meals & expense									
	Add 45.562% Org Install on RTF per WO 404			645.92	677.55					
	10.45% " " ONC " "			361.37	238.28					
				5882.55	4687.35					
	Add 24.289% Org Overhead			1428.84	1138.53					
				7311.39	5825.88					
		Summary								
					1145	1146	Total			
	Equipment Retired				1487.10	2283.92	3771	02		
	Add 45.562% Org Install on RTF per WO 404				677.55		677	55		
	Add 10.45% Org Install on ONC " "					238.28	238	28		
					2164.65	2522.20	4687	35		
	Add 24.289% Org Overhead				535.78	602.75	1138	53		
					2690.43	3135.45	5825	88		

Filed Feb 19 1948
Edgar L. Markley, Clerk

Defendant's Exhibit 55-25.

WORK ORDER

Retirement

W. O. No. 2069 R
Budget Sched. No.
Acct. No. 1145-1146
Franchise Exp. Date

Northeastern Public Service Company
Date 5-10-40 Location Ipswich Utility Electric

Description

Retire two miles of 38 KV line at Ipswich.

RECORDED
MAY 20 1940
BUDGET & ANALYSIS DEPT.

Date Work To Be Started | Date Work To Be Finished

See Retirement / Investment Work Order No. None

Proposed Expenditures—Budget Schedule No. $
Previous Authorizations $
This Authorization $

ESTIMATED COST OF WORK TO BE APPROVED	AMOUNT
1. Material To Be Purchased	
2. Material To Be Used From Stock	
3. Salvage Material To Be Used	
4. Transferred Equipment	
5. Labor	
6.	
7. Total	
8. Stores Department Charge %	
9. General Office Supervision %	
10. Interest On Idle Investment %	
11. Total Cost of Work To Be Approved	
PERMANENT WORK ORDERS	**AMOUNT**
12. Transformers and Installation	
13. Meters and Installation	
14. Services	
15. Short Extensions	
16.	
17.	
18. Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Pool Investment @ $ Per KW	
21. TOTAL INVESTMENT	
22. Less: Salvage To Be Used	—
23. Transferred Equipment	—
24. Contributions	—
25. Refundable Deposits	—
26. Permanent Work Orders	—
27.	—
28. Total	—
29. Total Cash Required for New Work to be Authorized	
Submitted By [signature]	DATE 5/13/40
Checked By [signature]	5-17-40
Checked By [signature]	5-17-40
Checked By [signature]	5-17-40

BENEFITS ACCRUING FROM NEW WORK	AMOUNT
Increased Gross Revenue Per Year	
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	
% Decreased Expense To Cost of New Work	

ESTIMATED RETIREMENT CHARGE		AMOUNT
Original Cost of Property Removed		7311.39
(How Computed and Date Installed)		
NO 404 1930		
Less: Transferred Equipment		
Original Cost of Property Retired		7311.39
Cost of Removing Property Retired		$400.00
TOTAL		7711.39
Salvage Mat.—Junk Value		—
Salvage Mat.—Ret. to Stock	$3595.51	—
TOTAL SALVAGE MATERIAL	—	3595.51
NET RETIREMENT CHARGE		4115.88

	DATE
Approved [signature]	5-17-40
Approved [signature]	5/17/40
Approved [signature]	5/17/40
Approved	
Approved	
Approved	
Approved	
Approved MIDDLE WEST SERVICE CO.	
Authorized By [signature]	5-21-40

*Investment-Retirement-Maintenance-Operating-Suspense

(OVER)

26

642

Defendant's Exhibit 55-25.

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below)

Original Cost

ACCOUNT NUMBER	Item No.	ITEMS	Distribution	Quantity	Unit Cost	Total	QUANTITY	COST PER UNIT	AMOUNT
1145	1	40' Poles	Stores	19	14.38	273.22 ✓		13.812	262.43
"	2	35' Poles	"	23	10.84	249.32 ✓		12.985	298.66
"	3	50' Poles	"	3	23.22	69.66 ✓		19.914	59.74
"	4	45' Poles	"	17	14.61	248.37 ✓		15.146	257.52
"	5	30' Poles	"	4	7.79	31.16 ✓		12.985	51.94
"	6	4"x5"x10' Crossarms	"	63	2.80	176.40 ✓		2.766	174.26
"	7	4"x5"x8' Crossarms	"	23	2.95	67.85 ✓		1.598	36.75
"	8	1 3/8" IH Pins	"	173	.915	158.30 ✓		.642	111.07
1146	9	45 KV Pin type insulators	"	251	1.42	356.42 ✓		1.374	344.87
"	10	45 KV Strain Units	"	24	6.80	163.20 ✓		9.32	223.68
1145	11	Head Guys	"	21	2.15	45.15 ✓		2.15	45.15
"	12	Cross Guys	"	2	7.47	14.94 ✓		7.47	14.94
"	13	Single Down Guys	"	7	5.39	37.73 ✓		5.39	37.73
"	14	Double Down Guys	"	5	6.60	33.00 ✓		6.60	33.00
"	15	Triple Down Guys	"	2	8.20	16.40 ✓		8.20	16.40
"	16	6"x8"x20' Crossarms	"	2	9.60	19.20 ✓		9.60	19.20
1146	17	#2/0 ASCR	"	11,627'		1504.50 ✓		.2306	2790.18
"	18	1/4" Static wire	"	11,329'		130.69 ✓		.0086	97.43
		TOTAL MATERIAL				$3595.51			4575.26
1145	19	Labor Poles $250.00							
1146	20	Labor Conductors 75.00							
	21	Transportation 75.00							
		Total Retirements Cost $400.00							
		Add 45.526% Original Install. on Poles etc. per WO 404 (1146.79)							645.92
		" 10.455% " " " Wire etc. " " " ($3595.51)							161.37
		Add 24.2895% Original Overheads per WO 404							1128.55
									2311.30

TOTAL CASH REQUIRED FOR NEW WORK—BY MONTHS	
MONTH	ESTIMATE
January 19	
February 19	
March 19	
April 19	
May 19	
June 19	
July 19	
August 19	
September 19	
October 19	
November 19	
December 19	
TOTAL	

Reasons Why Work Should Be Done:

If "% Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

This line will not be used after the Dakota Public Service Company reroute their lines to a point one mile north of the town of Ipswich.

Defendant's Exhibit 55-26 was received in evidence. It is in part as follows:

WORK ORDER

INVESTMENT

W. O. No. 2129
Budget Sched. No. 1941 Budget
Acct. No. 1143
Franchise Exp. Date Not applicable

NORTHWESTERN PUBLIC SERVICE Company
Date 12/9/40 Location Aberdeen Utility Electric

Description

To install 3 ground relays on each of two 38 KV circuits feeding from Aberdeen substation; to install necessary current transformer in neutral lead, to purchase and install test switches and relay cabinet and do necessary wiring.

RECORDED
DEC 23 1940
BUDGET & ANALYSIS DEPT.

Date Work To Be Started January 2, 1941 Date Work To Be Finished January 31, 1941

Retirement
See Work Order No. None
Investment

Proposed Expenditures—Budget Schedule No. $ 942.70
Previous Authorizations $
This Authorization $ 942.70

ESTIMATED COST OF WORK TO BE APPROVED	AMOUNT
1. Material To Be Purchased	710.00
2. Material To Be Used From Stock	
3. Salvage Material To Be Used	
4. Transferred Equipment	
5. Labor	150.00
6. Other expense	50.00
7. Total	
8. Stores Department Charge 7 %	5.25
9. General Office Supervision 3 %	27.45
10. Interest On Idle Investment %	
11. Total Cost of Work To Be Approved	942.70
PERMANENT WORK ORDERS*	AMOUNT
12. Transformers and Installation	
13. Meters and Installation	
14. Services	
15. Short Extensions	
16.	
17.	
18. Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Plant Investment @ $ Per KW	
21. TOTAL INVESTMENT	
22. Less: Salvage To Be Used	—
23. Transferred Equipment	—
24. Contributions	—
25. Refundable Deposits	—
26. Permanent Work Orders	—
27.	—
28. Total	—
29. Total Cash Required for New Work to be Authorized	942.70

BENEFITS ACCRUING FROM NEW WORK	AMOUNT
Increased Gross Revenue Per Year	None
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	None
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	None
% Decreased Expense To Cost of New Work	
ESTIMATED RETIREMENT CHARGE	AMOUNT
Original Cost of Property Removed	
(How Computed and Date Installed)	
Less: Transferred Equipment	
Original Cost of Property Retired	
Cost of Removing Property Retired	
TOTAL	
Salvage Mat.—Junk Value	—
Salvage Mat.—Ret. to Stock	—
TOTAL SALVAGE MATERIAL	—
NET RETIREMENT CHARGE	

		DATE
Submitted By		
Checked By	R. T. Mayer	12-9-40
Checked By	E. L. Bayha	12-9-40
Checked By		
Approved	L. F. Eyestone	12-9-40
Approved	R. T. Sanderson	12-20-40
Approved		
Approved		
Approved	CONCURRED IN BY NORTHWESTERN PUBLIC SERVICE COMPANY	
Approved	C. A. Thompson	12-24-40
Approved		
Approved		
Authorized	C. A. Thompson	12-26-40

*Investment-Retirement-Maintenance-Operating-Suspense

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Defendant's Exhibit 55-27.

FORM NO 70—SM-1-36

Final Return Sheet

W. O. No. 2127

Aberdeen Division

Description Purchase & Install 5000 K.V.A. 3 Phase Transformer 33/38 K.V., 3 Winding, Wye-Wye with Delta Tertiary to replace 3750 K.V.A. Auto Transformer Aberdeen Sub Station. Old unit to remain in service as spare transformer

Est. Cost 14,988.56 Date Started June 1941 Acct. Chg'd ____ $ ____

Act. Cost 13,761.04 Date Completed Oct 1941 Acct. Chg'd Sub 3A 1143 $ 13,761.04

% Over—Under 8.1892 Acct. Chg'd ____ $ ____

Date Cleared Nov 1941 Journal Entry 11-28 Acct. Chg'd ____ $ ____

ACCOUNT NO.	ITEM NO.	ITEM	QUANTITY EST.	QUANTITY ACT.	AMOUNT ESTIMATE	AMOUNT ACTUAL	DIFFERENCE QUAN.	DIFFERENCE AMT.
1143	1	Transformer 5000 K.V.A., 3 Phase 33000V to 38000V, 3 windings 33000V Wye, 38000V Wye, 2400V Delta. Separate neutral bushings brought out for each voltage winding	1	1	14,052.00	12,901.11		1150.89
1143	2	Minor rearrangement of bus work and alternations in supporting pad and track, to accomodate new installation			200.00	1.53	-	198.47
1143	3	Unloading and installing expense to transfer company			100.00	280.61	-	180.61
1143	4	Installation Labor			200.00	100.46		99.54
1143	5	Transportation- Car Expense				3.06	-	3.06
		TOTAL			14,552.00	13,282.85		1269.15
		Admin & Gen'l Expense			436.56	478.19		
					14,988.56	13,761.04		1227.52

Voted Feb 19 1942
Roy L Marker Clerk

Dis

Signed [signature] Dept Head Date 12-1-41 Signed [signature] Chief Clerk Date 12-2-41 Signed C P Mersey Manager Date 12-19-41

Defendant's Exhibit 55-26.

3882

WORK ORDER

INVESTMENT

W. O. No. 2127
Budget Sched. No. 1941 Budget
Acct. No. 1143
Franchise Exp. Date Not applicable

NORTHWESTERN PUBLIC SERVICE — Company
Date 12-9-40 Location Aberdeen Utility Electric

Description

Purchase and install new 5000 K.V.A., 3 phase, transformer 33/38 K.V., Three winding, Wye-Wye with Delta tertiary. To replace present 3750 K.V.A. auto transformer which is to be sold to Dakota Public Service Company for use at Bowdle.

RECEIVED
DEC 23 1940

Date Work To Be Started January 2, 1941 — Date Work To Be Finished January 31, 1941

See Retirement / Investment — Work Order No. 2126? (cancelled)

Proposed Expenditures—Budget Schedule No. 1941 $ 15000.00
Previous Authorizations $
This Authorization $ 14988.56

ESTIMATED COST OF WORK TO BE APPROVED	AMOUNT
1. Material To Be Purchased	14,052.00
2. Material To Be Used From Stock	
3. Salvage Material To Be Used	
4. Transferred Equipment	
5. Labor	200.00
6. Other	300.00
7. Total	14,552.00
8. Stores Department Charge %	
9. General Office Supervision %	436.56
10. Interest On Idle Investment %	
11. Total Cost of Work To Be Approved	14,988.56
PERMANENT WORK ORDERS	**AMOUNT**
12. Transformers and Installation	
13. Meters and Installation	
14. Services	
15. Short Extensions	
16.	
17.	
18. Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Pool Investment @ $ Per KW	
21. TOTAL INVESTMENT	14,988.56
22. Less: Salvage To Be Used	—
23. Transferred Equipment	—
24. Contributions	—
25. Refundable Deposits	—
26. Permanent Work Orders	—
27.	—
28. Total	—
29. Total Cash Required for New Work to be Authorized	14,988.56

	DATE
Submitted By	
Checked By	12-9-40
Checked By	12-9-40
Checked By	

BENEFITS ACCRUING FROM NEW WORK	AMOUNT
Increased Gross Revenue Per Year	None
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	None
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	None
% Decreased Expense To Cost of New Work	

ESTIMATED RETIREMENT CHARGE	AMOUNT
Original Cost of Property Removed	
(How Computed and Date Installed)	
Less: Transferred Equipment	
Original Cost of Property Retired	
Cost of Removing Property Retired	
TOTAL	
Salvage Mat.—Junk Value	
Salvage Mat.—Ret. to Stock	
TOTAL SALVAGE MATERIAL	
NET RETIREMENT CHARGE	

	DATE
Approved	12-9-40
Approved	12/11/40
Approved	
Approved	
Approved	
Approved	12-24-40
Approved	
Approved	
Authorized	12/24/40

CONCURRED IN BY NORTH WESTERN PUBLIC SERVICE CO. PARTY

*Investment-Retirement-Maintenance-Operating-Suspense

(OVER)

YB

785

Defendant's Exhibit 55-26.

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below)

ACCOUNT NUMBER	ITEMS	SIZE	QUANTITY	COST PER UNIT	AMOUNT
1143	Transformer. 5000 K.V.A., 3 phase, 33,000 V to 35,000 V. Three windings 33,000 v Wye, 35,000 v Wye, 2400 v Delta. Separate neutral bushings brought out for each High Voltage Winding	5000 KVA	1	14,052.00	14,052.00
2	Minor rearrangement of Bus Work and alterations in supporting pad and track, to accomodate new installation				200.00
3	Unloading and installing expense to Transfer Company.				100.00
	Total Material & Expense				14,352.00
4	Installation Labor				200.00
5	G.O. Supr. & Engrg. 3%				436.56
	Total				14,988.56

TOTAL CASH REQUIRED FOR NEW WORK—BY MONTHS	
MONTH	ESTIMATE
January 19[illegible]	14,988.56
February 19	
March 19	
April 19	
May 19	
June 19	
July 19	
August 19	
September 19	
October 19	
November 19	
December 19	
TOTAL	14,988.56

Reason Why Work Should Be Done:

If "% Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

Present auto transformer size limits interchange power into new west line and ties neutrals of North and South systems solidly together, complicating ground protection and making use of resonant coil protection impossible. Planned future increase of generating capacity makes larger transformer mandatory eventually.

29

Defendant's Exhibit 55-26.

Defendant's Exhibit 55-27 was received in evidence. It is in part as follows:

Defendant's Exhibit 55-25.

FORM NO 70—SU-1-38

Final Return Sheet

Aberdeen and 2-33KV Division

W. O. No. 2129 1

Description Install 3 ground relays on each of two 38 KV circuits feeding from Aberdeen Substation #3A

Est. Cost 992.70 Date Started Feb 1941 Acct. Chg'd $

Act. Cost 1196.22 Date Completed Dec 1941 Acct. Chg'd 1143 $ 1196.22

% Over—Under 26.93 Acct. Chg'd $

Date Cleared Dec 1941 Journal Entry 12-28 Acct. Chg'd $

ACCOUNT NO.	ITEM NO.	ITEM	QUANTITY EST.	QUANTITY ACT.	AMOUNT ESTIMATE	AMOUNT ACTUAL	DIFFERENCE QUAN.	DIFFERENCE AMT.
1143	1	Ground Relays CWC	6	4	504.00		2	30.77
1143	2	Current Transformer - outdoor type	1	2	71.00	43.18	1	27.82
1143	3	Test Switches & Devices	6	--	60.00	59.42	6	.58
1143	4	Galvanized Conduit	100'	106'	25.00	19.57	6'	5.43
1143	5	Cable & Wiring	100'	145'	50.00	111.34	45'	61.34
1143	6	Stores Expense			5.25	8.99		3.74
1143	7	Labor Installing Sub-Station Equipment			150.00	373.63		223.63
	7A	Transportation				43.06		43.06
	1A	Overcurrent Relays Type SE	0	12		357.01		
					865.25	1154.65		289.40
		Engr + Supervision			50.00			
					915.25	1154.65		
		Admin + Gen Exp			27.45	41.57		
					992.70	1196.22		253.52

Filed Feb 19, 1948
Cozy D Marker Clerk

Work Order Checked As To:

	Signature	Date
Private R.W.		
Public R.W.		
Tax Maps		
Engineering		1-26-42
Treasury		1-26-42
Accounting		1-26-42

Signed [signature] 1/2/42 Signed [signature] 1-2-42 Signed

Dep't Head Date Chief Clerk Date Manager Date

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below)

ACCOUNT NUMBER	ITEMS	SIZE	QUANTITY	COST PER UNIT	AMOUNT
1143	1. Ground relays		6	$4.00	504.00
	2. Current transformer, outdoor type		1	71.00	71.00
	3. Test switches and devices		6	10.00	60.00
	4. Galvanized conduit		100'	.25	25.00
	5. Cable and wiring		100'	.50	50.00
	Total material				710.00
	S. F. & H. - 7%				5.25
	Labor installing substation equipment				150.00
	Engineering and estimating				50.00
	Administrative and General 3%				27.45
	Total Cost				942.70

TOTAL CASH REQUIRED FOR NEW WORK—BY MONTHS		
MONTH		ESTIMATE
January	1941	942.70
February	19	
March	19	
April	19	
May	19	
June	19	
July	19	
August	19	
September	19	
October	19	
November	19	
December	19	
TOTAL		

Reason Why Work Should Be Done:

If "Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

This system now has no ground protection except phase relays, which have proved to be inadequate, causing the loss of expensive transformers in several instances. Ground relaying will make for better fault protection on this system and prevent improper relaying on ground faults.

31

Defendant's Exhibit 55-27.

Defendant's Exhibit 55-28 was received in evidence. It is in part as follows:

Dfdt's 55-28
46

FORM NO. 70-GS-1-50

Final Estimate Sheet

W. O. No. 2416

Division Huron

Description Install 2 Regulators in Telephone Substation to regulate Voltage in Town of Bellefleur

Est. Cost 2310.72 Date Started July 1943

Act. Cost 2210.00 Date Completed August 1943

% Over-Under 4.357

Date Cleared Nov 1943 Journal Entry 11-28

Acct. Chg'd. $

Acct. Chg'd. 1143 Sub 2A $ 2210.00

Acct. Chg'd. $

Acct. Chg'd. $

ACCOUNT NO.	ITEM NO.	ITEM	QUANTITY EST.	QUANTITY ACT.	AMOUNT ESTIMATE	AMOUNT ACTUAL	DIFFERENCE QUAN.	DIFFERENCE AMT.
1143	1	Voltage Regulators - GE - ERS 2 KVA Ser# 6794973 - 74	2	2	1967.00	2006.34	—	39.34
✓	2	Installation Expense			257.00	126.86		130.14
✓	3	Clamps & Conf Eye 3.67			86.72	76.80		
					2310.72	2210.00		100.72

Filed Feb. 10, 1944
Fay S. Marker Clerk

Work Order Checked As To

	Signature	Date
Private R.W.		
Public R.W.		
Tax Maps		
Engineering	[illegible]	12/18/43
Treasury	[illegible]	[illegible]
Accounting	[illegible]	12-16-43
		12-20-43

2310.72 2133.70

Signed [illegible] Dept Head 12-2-43 Date

Signed [illegible] Chief Clerk 11-2-43 Date

Signed [illegible] Manager 11-2-43 Date

50

795

Defendant's Exhibit 55-28.

WORK ORDER

Investment

W. O. No. 2416
Budget Sched. No. 7
Acct. No. 1152
Franchise Exp. Date

Northwestern Public Service Company
Date April 14,1943 Location Gettysburg, S. D. Utility Electric

Description

Install 2 Regulators in Gettysburg Sub. to regulate voltage in town of Gettysburg, S. D.

RECORDED
APR 23 1943
BUDGET & ANALYSIS DEPT.

Date Work To Be Started Soon as equipment arrives Date Work To Be Finished 60 days

Retirement
See Work Order No. None
Investment

Proposed Expenditures—Budget Schedule No. 7 $ 2180.00
Previous Authorizations $
This Authorization $ 2310.72

ESTIMATED COST OF WORK TO BE APPROVED	AMOUNT
1. Material To Be Purchased	1967.00
2. Material To Be Used From Stock	
3. Salvage Material To Be Used	
4. Transferred Equipment	
5. Labor	
6. Installation Expense	267.00
7. Total	2234.00
8. Stores Department Charge	
9. General Office Supervision 3.5%	76.72
10. Interest On Idle Investment	
11. Total Cost of Work To Be Approved	2310.72
PERMANENT WORK ORDERS	**AMOUNT**
12. Transformers and Installation	
13. Meters and Installation	
14. Services	
15. Short Extensions	
16.	
17.	
18. Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Pool Investment @ $ Per KW	
21. TOTAL INVESTMENT	
22. Less: Salvage To Be Used	
23. Transferred Equipment	
24. Contributions	
25. Refundable Deposits	
26. Permanent Work Orders	
27.	
28. Total	
29. Total Cash Required for New Work to be Authorized	2310.72

		DATE
Submitted By	B. A. York	
Checked By		4-16-43
Checked By		4-20-43
Checked By		4-20-43

BENEFITS ACCRUING FROM NEW WORK	AMOUNT
Increased Gross Revenue Per Year	None
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	None
% Decreased Expense To Cost of New Work	

ESTIMATED RETIREMENT CHARGE	AMOUNT
Original Cost of Property Removed	
(How Computed and Date Installed)	
Less: Transferred Equipment	
Original Cost of Property Retired	
Cost of Removing Property Retired	
TOTAL	
Salvage Mat.—Junk Value	—
Salvage Mat.—Ret. to Stock	—
	—
TOTAL SALVAGE MATERIAL	—
NET RETIREMENT CHARGE	

		DATE
Approved	J. F. Buckman	4-20-43
Approved	R. T. Smith	11/20/43
Approved		
Approved		
Approved		
Approved		
Approved		
Approved		
Authorized		

CONCURRED IN BY
MIDDLE WEST SERVICE COMPANY
BY

*Investment-Retirement-Maintenance-Operating-Suspense

(OVER)

Defendant's Exhibit 55-28.

297

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below)

ACCOUNT NUMBER	ITEMS	SIZE	QUANTITY	COST PER UNIT	AMOUNT
1152	Voltage regulators 100 amps 2400 Volts 10% plus or minus				
	Freight Prepaid		2	983.50	1967.00
	Installation Expense				257.00
					2224.00
	General Office Supervision 3.6%				86.72
	Total Estimate				2310.72

TOTAL CASH REQUIRED FOR NEW WORK—BY MONTHS		
MONTH		ESTIMATE
January	19	
February	19	
March	19	
April	19	
May	19 43	2310.72
June	19	
July	19	
August	19	
September	19	
October	19	
November	19	
December	19	
TOTAL		

Reason Why Work Should Be Done:

If "% Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

Present regulators loaded beyond capacity and must be replaced before peak season. W. P. B. has authorized this replacement. Present overloaded regulators will be used at some other location.

33

799

Defendant's Exhibit 55-28.

U. S. GOVT. PRINTING OFFICE 1-38 PRINTED IN U. S. A.

WORK ORDER

RETIREMENT

W. O. No. 2356R
Budget Sched. No. --
Acct. No. 1143
Franchise Exp. Date

NORTHWESTERN PUBLIC SERVICE Company
Date 3/27/42 Location Gettysburg, S.D. Utility Electric

Description

Retire 3 - 200 KVA 22000/2300 KVA Transformers from the Gettysburg Sub.

Date Work To Be Started **Date Work To Be Finished**

See Retirement / Investment Work Order No. None

Proposed Expenditures – Budget Schedule No. $
Previous Authorizations $
This Authorization $

ESTIMATED COST OF WORK TO BE APPROVED	AMOUNT
1. Material To Be Purchased	
2. Material To Be Used From Stock	
3. Salvage Material To Be Used	
4. Transferred Equipment	
5. Labor	
6.	
7. Total	
8. Stores Department Charge %	
9. General Office Supervision %	
10. Interest On Idle Investment %	
11. Total Cost of Work To Be Approved	
PERMANENT WORK ORDERS	**AMOUNT**
12. Transformers and Installation	
13. Meters and Installation	
14. Services	
15. Short Extensions	
16.	
17.	
18. Total Permanent Work Orders	
19. TOTAL COST OF NEW WORK	
20. Power Pool Investment @ $ Per KW	
21. TOTAL INVESTMENT	
22. Less: Salvage To Be Used	
23. Transferred Equipment	
24. Contributions	
25. Refundable Deposits	
26. Permanent Work Orders	
27.	
28. Total	
29. Total Cash Required for New Work to be Authorized	

	DATE
Submitted By	
Checked By C. M. Musser	3-31-42
Checked By E. L. Bayles	3-31-42
Checked By	

BENEFITS ACCRUING FROM NEW WORK	AMOUNT
Increased Gross Revenue Per Year	
% Increased Gross Revenue To Cost of New Work	
Increased Net Revenue Per Year	
% Increased Net Revenue To Cost of New Work	
% Increased Net Revenue To Total Investment	
Decreased Expense Per Year	
% Decreased Expense To Cost of New Work	

ESTIMATED RETIREMENT CHARGE	AMOUNT
Original Cost of Property Removed	4653.82
(How Computed and Date Installed)	
Gettys. Sub #9 A	
Less: Transferred Equipment	
Original Cost of Property Retired	
Cost of Removing Property Retired	
TOTAL	4653.82
Salvage Mat.—Junk Value	
Salvage Mat.—Ret. to Stock	
TOTAL SALVAGE MATERIAL	
NET RETIREMENT CHARGE	4653.82

	DATE
Approved C. F. Fitchner	4-1-42
Approved C. Trombley	4/1/42
Approved	
Approved	
Approved	
Approved	
Approved	
Approved	
Authorized C. Peterson	4/2/42

*Investment-Retirement-Maintenance-Operating-Suspense

(OVER)

SUB 32

Defendant's Exhibit 55-29.

Defendant's Exhibit 55-29 was received in evidence. It is in part as follows:

Dept 455 29 pl

Form No. 70-025-12-30
FINAL RETURN SHEET Retirement W. O. 2356 R District Hinsdale

Description Reface 3-200 KVA 22000/2300 V Transformers from Gettysburg Sub 90

Date Cleared April 1947 Journal No. 4-30

MEMORANDUM RECORD ONLY				CREDIT	
Salvage Value	Retirement Cost	Net Retirement Charge		Property Account Number	Amount
-	-	4653.82		1143	4653.82

ITEM	QUANTITY Estimated	QUANTITY Actual	ORIGINAL COST Estimated	ORIGINAL COST Actual	Account to Credit	Salvage Value Estimated	Salvage Value Actual	Retirement Cost Estimated	Retirement Cost Actual
200 KVA Transformers 22000/2300 V	3	3	3968.66	3968.66	1143	-	-		
Sec" 12 30 39									
" 12 30 40									
" 12 30 41									
Add Overhead			685.16	685.16					
Total retirement			4653.82	4653.82		-	-	-	-

Private Ltr. [illegible] 5/16/45
Public Ltr. [illegible]
Tax Dept. [illegible]
Engineering [illegible]
Accounting [illegible] 5-13-47
[illegible] 5-19-47

Filed Feb 19 1948
Roy D Marker Clerk

Signed ..... Dept Head Date Signed ..... Chief Clerk Date Signed ..... Manager Date

#9

IDB

Defendant's Exhibit 55-29.

DETAILED ESTIMATE OF COST (Itemize Labor and Material Below)

ACCOUNT NUMBER	ITEMS	SIZE	QUANTITY	1932 PER UNIT Cost	1932 AMOUNT Salvage
1183	22000/2300V Transformer Ser. #123039	200 KVA	1		
	# 123040	200 KVA	1	3968.66	—
	# 123041	200 KVA	1		
	Add Overheads			685.16	
	Total retirement			4653.82	—

TOTAL CASH REQUIRED FOR NEW WORK — BY MONTHS	
MONTH	ESTIMATE
January 19	
February 19	
March 19	
April 19	
May 19	
June 19	
July 19	
August 19	
September 19	
October 19	
November 19	
December 19	
TOTAL	

Reason Why Work Should Be Done:

If "% Increased Net Revenue to Total Investment" is less than 10% for depreciation and return, please explain fully reasons justifying expenditure.

In 1932, at the time that our substations were set up in detail, these transformers were shown as belonging to N.W.P.S.Co. Since that time it has been established that these transformers were the property of the Dakota Public Service Company. As all adjustments were made to the Reserve for Depreciation in the 1932 setup we are also now charging the Reserve with the write-off of these transformers.

55

Defendant's Exhibit 55-30 was received in evidence. It consists of subsidiary ledger sheets of defendant with reference to work order 420.

Defendant's Exhibit 55-31 was received in evidence. It consists of subsidiary ledger sheets of defendant with reference to work order 404.

Defendant's Exhibit 55-32 was received in evidence. It consists of subsidiary ledger sheets of defendant with reference to work order 397.

Defendant's Exhibit 55-33 was received in evidence. It consists of subsidiary ledger sheets of defendant with reference to work order 2069-R, work order 2127, work order 2356-R and work order 2416.

Q. Now, have you produced all of the records and files from which you built the tabulations known as Plaintiff's Exhibits 88 and 88-A?

A. Yes. Except we did have access to certain journal vouchers. There would be a great many of them which were withdrawn from the files in Huron in support of these things.

Q. You went through those, I take it, when you made your audit? A. That is right.

Q. You are familiar with them, are you?

A. I believe I know the ones I want.

Q. With the reservation that the interchange vouchers or journal vouchers were used to some extent in the completion of the tabulation, 88 and 88-A, have you produced everything else?

A. There is one other record that I used. It was a sort of computation by Mr. E. L. Bayles, which was produced for

me by Mr. Mauch or one of his assistants, and also Exhibit 216.

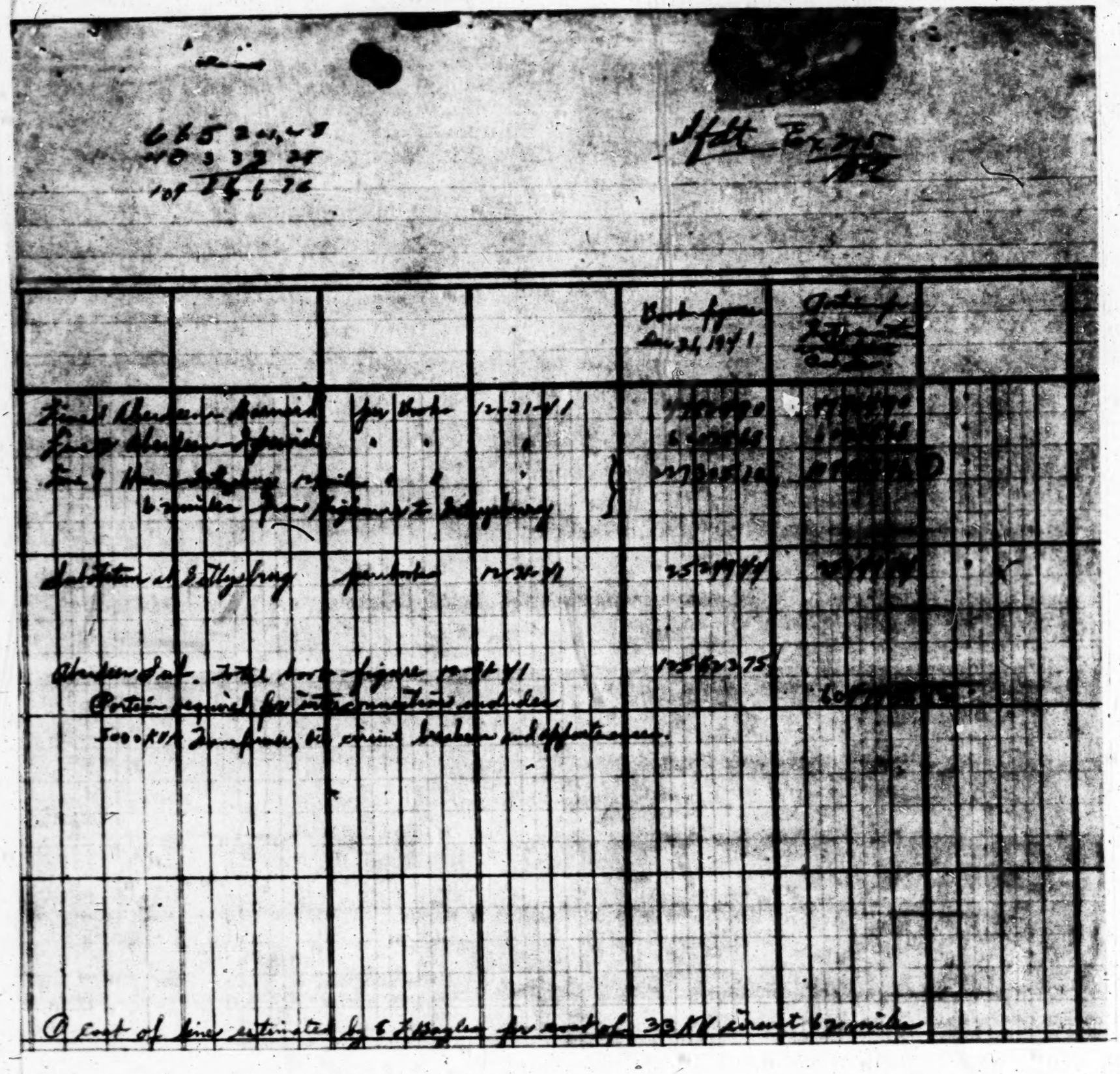
Q. Now, will you look at Plaintiff's Exhibit 216?

A. Yes, this is another document I used.

Q. Now, have you got everything except journal vouchers and cash vouchers?

A. As far as I can recall that is all of it.

Defendant's Exhibit 215 was received in evidence. It is as follows:



The lower part of this exhibit appears in next frame.

(1) Cost of line estimated by E. J. Bayless for part of 33 kV circuit between Highmore & Gettysburg. Estimated by assuming actual unit prices on this portion of line, approximately same result as obtained by pricing conductor line on basis of acreage basis.

$\frac{62}{144}$ of $237,805.10 = $ $102,944

(2) Cost of substation estimated by Bayless & Bayless from actual work orders as applicable to interconnection.

Filed Feb 18. 1948
Roy D. Marker
Clerk.

11

Defendant's Exhibit 215.

608

BLUNT TO GETTYSBURG LINE - 33 K.V.

1.	30' poles		29	$ 139.00
2.	35' poles		650	8,015.45
3.	40' poles		40	951.40
4.	45' poles		15	250.60
5.	50' poles		9	174.00
6.	Cross Arms - 10'	943 @ 1.73		1,631.39
9.	18" D. A. Bolts	339 @ .15		50.85
10.	12" Machine Bolts	27 @ .075		2.02
11.	14" Machine Bolts	49 @ .09		4.41
13.	60" Pole Top Pin & Eye Bolt	1995 @ .63		1,256.85
14.	½ X 6" Carriage Bolts	1853 @ .0335		62.08
15.	10" Machine Bolts	902 @ .075		67.65
16.	Steel Pins 1 3/8"	1165 @ .55		640.75
18.	Washers	514 @ .028		14.39
19.	Anchors			289.00
20.	Anchor Logs & 8' Rods			30.80
21.	Guy Strand 3/8"			348.00
22.	Strain Plates			7.49
23.	Guy Hooks			25.60
24.	3-Bolt Clamps			53.60
25.	½" X 4" Lags			16.50
26.	#4 A.C.S.R.			
27.	#2/0 A.C.S.R.			23,980.00
28.	#4 Tie Wire			387.00
29.	Aluminum Armour Wire			65.40
30.	45 K.V. Insulators			5,633.25
32.	Strain Units			554.00
		Material		$44,301.48
	Labor on Structures		$4,880.00	
	Labor on Conductors		3,430.00	
	Incidentals		7,120.00	
	Supervision		5,480.00	
	Interest		1,313.00	
		Overheads	$22,223.00	$22,223.00
				$ 66,524.48

$\frac{66,524.48}{33.5}$ = $1,985. per Mi.

Defendant's Exhibit 215.

811

33 K.V. LINE. [illegible] TO BENTT (OKLAHOMA)

33 K.V. built over 6600 V circuit. Poles charged to 6600 V. line.

26 Miles. 2/0 ACSR. 200' Span. 26 Spans per Mile.

Conductor 2/0 ACSR. 26 Mi. 76,440 lb. @ .243		18,574.92
Tie Wire #4 Aluminum		298.30
Armour Wire - Aluminum.		83.10
Cross Arms 10' - - - - - 754 @ 1.73.		1,304.42
½" X 6" Carriage Bolts- -1508 @ .0337		50.82
72" Angle Braces- - - - - 754 @ .884.		666.54
½" X 4" Lags - - - - - 754 @ .03		22.62
18" D.A. Bolts- - - - - 100 @ .15		15.00
14" Machine Bolts - - - - 554 @ .09		49.86
60" pole top pin and eye bolt - - - 676 @ .63		425.88
1 3/8" Steel Pins - - - -1352 @ .546.		738.19
Strain Units - - - - - - 62 @ 6.94.		430.28
45 K.V. Insulators - - -2028 @ 2.023		4,102.64
3/8" Guy Strand		268.00
Guy Hooks		19.80
Strain Plates		5.83
Material		$26,971.28
Labor on Structures	$3,840.00	
Labor on Conductors	2,710.00	
Incidentals	4,480.00	
Supervision	4,300.00	
Interest.	1,031.00	
	$16,361.00	16,361.00
		$ 43,332.28

$\frac{43,332.28}{26}$ = $1,665. per Mi.

Defendant's Exhibit 215.

818

Q. I show you Defendant's Exhibit 215, and ask you if this was a part of the papers and records that you used in the preparation of Exhibits 88 and 88-A? A. Yes, they are.

Defendant's Exhibit 216-B was received in evidence and is as follows:

Defendant's Exhibit 216-B.

Basis for Charging Northern Power & Light Company With Fixed Charges on Interconnecting Lines.

In 1929 Northern Power & Light and North Dakota Power & Light Company came under the same management and at that time common ownership of the properties was contemplated.

At that time the interconnected system of North Dakota Power & Light Company and Northern Power & Light Company was short of capacity on the south end of the system and it was necessary for Northern Power & Light Company to operate a number of small obsolete plants. In addition to power costs being comparatively high the relations in a number of towns were jeopardized and some of the better towns had threatened to install their own plants unless service was improved and rates lowered.

In order to remedy this condition it was finally decided to connect the lines of Northern Power & Light Company with Northwestern Public Service Company at three points, with the idea in mind of improving service to the towns served by Northern Power and Light Company. This also permitted shutting down of a number of small plants, and by operating the systems of the three companies as an interconnected system, power costs were substantially reduced. The protection afforded by the tie in on the south end with Northwestern Public Service Company permitted the Beulah plant to furnish a much greater proportion of the total requirements, and the operation of the Beulah station has been further improved by Northwestern Public Service Company taking dump current generated in this plant when it was available at approximately the fuel cost of Northwestern Public Service Company.

The effect of this interconnection on the power costs of the U. P. U. Companies is shown as follows:

Year	* Net K. W. H. Generated & Purchased	Cost of Power	† Cost per K. W. H.	——Effect of Savings—— * K. W. H. Sold	Savings Under 1929 Costs
1929	21,544,228	233,324	.0108	15,373,538	
1930	25,968,292	262,666	.0101	17,344,202	12,140
1931	29,662,785	235,297	.0793	18,057,206	54,634
1932	29,652,179	219,503	.074	17,953,431	61,041
1933	30,856,573	217,143	.0703	17,919,443	67,556
1934	32,747,164	238,866	.0729	20,892,413	73,332
1935	38,497,367	253,916	.0659	24,374,111	102,615

* Inter-Company elliminated.

† The figures under the column headed "Cost per K. W. H." for the years 1931 through 1935 are erroneously stated in cents in lieu of mills.

The above tabulation shows the reduction in power costs and the effect of this reduction when applied to the kilowatt-hour sales each year. If these companies had the same unit costs in 1935 as in 1929, production expenses would have been increased $102,615.

All of these savings are not due to the interconnection but certainly a substantial portion is, as the generating equipment is substantially the same as in 1929 and the cost of fuel, labor, etc. has not been substantially reduced since that time.

On account of the financial condition of the U. P. U. Companies at the time the interconnection was made and on account of the common ownership that was contemplated at that time, Northwestern Public Service Company made the entire investment. A short time later both holding companies went into receivership and the matter was held up pending reorganization of the holding companies. Following is a summary of the investment and fixed charges thereon. During this period Northwestern Public Service Company absorbed all the fixed charges but we now feel that some fair allocation should be made of these charges.

Allocation of Investment for Tie-in With Northern Power and Light Company

Aberdeen Substation

This sub has 5 bays, 3 of which are for equipment used only for the tie-in. Substation structure, foundations, fence

and other equipment of this nature are charged on a basis of 60% to the tie-in. Equipment identified as useful only for the tie-in is charged direct to the tie-in. Charges are as follows:

Charges to be prorated:

W. O. 404	Sub structure, air break switches and bus work	17,013.85
"	Control cable	498.99
"	Fence	290.10
"	Foundations	3,016.52
	Total Material	20,819.46
	Labor—13.12% of Material	2,731.51
	Total Labor and Material	23,550.97
	Overheads—25.595% of Material and Labor	5,556.85
	Total	29,107.82
	60% of above total allocated to tie-in	17,464.49
W. O. 404	3–38 KV OCB	7,010.20
"	3–33 KV Potential transformers	1,315.79
"	2–33 KV Current transformers	288.00
"	6–38 KV Current transformers	2,653.17
"	4–22 KV Potential transformers	2,470.23
"	2–38 KV Arresters	3,169.24
"	3–Control panels with relays and instruments	3,078.74
	13.12% Install. on equipment used solely for tie-in	2,621.10
	25.595% Overheads on mat. and labor used solely for tie-in	6,256.93
W. O. 1081	1–3750 KVA Auto transformer	6,219.60
	Total	52,547.49

Gettysburg Sub

All chargeable to tie-in

W. O. 420 ..... 24,851.86

Aberdeen-Ipswich Line

All chargeable to tie-in

W. O. 404 ..... 64,370.97

Aberdeen-Barnard Line

This line also serves Barnard, Westport, Columbia, and the Aberdeen City Waterworks. This load was formerly served by a 6900 volt line from Aberdeen. Our original investment in this line was $16,773.65. We feel that this amount should be allocated to the load we serve.

W. O. 404 Present investment in Aberdeen-Barnard line 49,573.99

W. O. 49 and N-271—6900 volt line..... 16,773.65

Net chargeable to tie-in..... 32,800.34

Highmore-Gettysburg Line

This line was built on two work orders. Work order 397 covered the extension of our 33 KV circuit from Ree Heights to Highmore, a distance of 13 miles, and the moving of the sub to Highmore. This is chargeable to the Highmore group. It also covered 13 miles of pole line and 33 KV circuit from Harrold to Blunt. This 33 KV circuit is all chargeable to the tie-in. Since a 6900 volt circuit was later added on this pole line to serve Blunt, only half the pole line investment is chargeable to the tie-in. Therefore, half of the transmission line investment on W. O. 397 is chargeable to the tie-in.

W. O. 397—allocated to tie-in..... 17,755.90

W. O. 420 covered a 33 KV line from Blunt to Gettysburg and a sub at Gettysburg. This is all chargeable to the tie-in. It also covered 13 miles of 6900 volt circuit from Blunt to Harrold which is not chargeable to the tie-in. The cost of this circuit including labor and overheads was approximately $9,300.

W. O. 420—Line investment allocated to tie-in: 101,325.16 — 9,300.00	92,025.16

Summary of Tie-in Investment

Aberdeen Sub	52,547.49
Gettysburg Sub	24,851.86
Aberdeen-Barnard Line	32,800.34
Aberdeen-Ipswich Line	64,370.97
Highmore-Gettysburg Line	109,781.06
	284,351.72

Annual Charges

13% of $284,351.72 for interest, depreciation and taxes	36,965.72
Maintenance at 1% of Investment	2,843.52
Operation of lines	1,030.00
	40,839.24

Based upon the above we are making an annual charge of $20,000 to Northern Power & Light Company as their proportion of the fixed charges upon these interconnection facilities, effective as of January 1st, 1936.

Basis of Inter Company Charge Between Northwestern Public Service Company and Northern Power & Light Company

Production Costs. First, we submit the following analysis of fuel costs, per KWH generated, in the Aberdeen sta-

tion, for the purpose of determining a maximum price per KWH of purchased power from the Northern Power & Light Company system at interconnection with Northwestern.

(1) Normal load on Aberdeen Station to system of Northwestern Public Service Company average approximately 3000 KW demand.

Water Rate—12.6#/KWH Gross Generated

Evaporation Boilers—4.25#/lb. lignite

Cost of Lignite—$3.07 per ton (Bunker)

Pounds Fuel per KWH (Gross)—2.97 lbs.

Fuel Cost per KWH Net Generated, equals—

$$\frac{2.97 \times 307 \times .83 \text{ (Eff.)}}{2000} = 0.549 \text{ or } 5.5 \text{ mills/KWH}$$

(2) Power to be purchased in excess of above normal load on Aberdeen plant will average around 2000 KW demand.

Water Rate—12.1#/KWH Gross Generated

Evaporation Boilers—4.4#/lb. lignite

Cost of lignite—$3.07 per ton (Bunker)

Pounds of Fuel per Gr. KWH Gen.—2.75 pounds.

Fuel Cost per KWH Net Generated, equals—

$$\frac{2.75 \times 307 \times .83}{2000} = -0.505 \text{ or } 5. \text{ mills/KWH}$$

(3) Overall station performance—Aberdeen Station—12 months operation is as follows:

Water Rate—15.6#/Kwh—Gross Generated

Cost of Coal—$3.07 per ton

Pounds of Fuel per Gr. KWH Generated—3.31 lbs. lignite (Deducted Banked Boiler Fuel).

Fuel Cost per Net KWH Generated—5.75 mills/KWH

Based upon the above analysis we made effective a rate of 5 mills per KWH for energy transferred between North-

western Public Service Company and Northern Power & Light Company. The benefits to Northern Power & Light Company are obvious, as they could not render dependable service to a number of their towns without this connection.

In the case of Northwestern Public Service Company out-of-pocket costs are not increased and there are many intangible benefits including centralized management and control.

C. J. STRIKE.

Q. I call your attention to Defendant's Exhibit 216-B, consisting of four pages, and ask you if those four pages are a portion of Exhibit 216, which you have now selected and identified as being material and records, from which you prepared the tabulation, Exhibit 88 and 88-A?

A. This is the document, but I worked only on the lower two thirds of page 2 and the entire page 3.

Q. You had the entire document before you, however, didn't you? A. That is right, but these are other subjects.

Q. Now, have we everything that you used, all records and files, other than the journal vouchers and cash vouchers in the preparation of this tabulation, 88 and 88-A?

A. I believe so.

Q. When did you say you first started in the accounting end of the electric and gas utility work? A. May, 1922.

Q. I believe on your direct examination you testified that beginning in 1937, and following the enactment of the Public Utilities Act in 1935, that you had established an accounting system by authority of FPC where the utility was subject to their control?

A. Yes. I referred to the uniform system of accounts for electric utilities, prescribed by Federal Power Commission.

Q. That didn't come until 1937, did it, or about that time?

A. I think it was made effective January 1, 1937, and was sent out to all of the utilities maybe a year in advance for comment and suggestion. It is much the same in general fashion as the old state commission form.

Q. Prior to that, each company handled accounts in accordance with the rules and practices of the accountants in charge. Isn't that right?

A. Subject to the jurisdiction of the state commissions.

Q. Where there was jurisdiction by a state commission. Is that right? A. That is right.

Q. There is no such commission control of utility companies in South Dakota, is there? A. No.

Q. I am speaking about electric and gas utilities?

A. That is right.

Q. Now, as I understand, and I am referring to Exhibit 88, the column on the right hand side, which is total of $303,449.26, and which is entitled "By Sandstedt's letter to FPC, dated 2/24/42". You got that from the Sandstedt letter and from the Bayles and Gazin tabulation which has been marked Defendant's Exhibit 215?

A. I took it from photostat of the Sandstedt letter to the Federal Power Commission.

Q. What did you say about the Bayles and Gazin tabulation?

A. I stated that was part of the records I used to determine the schedule.

Q. As a matter of fact, the Bayles and Gazin study shows on the first page of that Exhibit 215, the same figures you used in the third column to the right and on the right hand side of the page, Exhibit 88? A. They are identical.

Q. When did you first see the Sandstedt letter to the Commission and the Bayles & Gazin study, Exhibit 215?

A. I suppose I saw the Sandstedt letter, the photostat of the Sandstedt letter six or eight months ago, perhaps. The Bayles and Gazin study in November, 1946. I would not call it a study. A computation.

Q. You say Mr. Mauch showed you that?

A. Either he or one of the men he assigned to watch us.

Q. In that column then you have no computation of your own. You have simply inserted those as being computation that were in the interconnecting companies' joint office?

A. I haven't altered the figures in any way. I just put in the figures as the column head calls for.

Q. Now, the column on Exhibit 88, which is entitled "By Defendant's Exhibit 216", where did you get those figures?

A. I think that was the document that was last identified by the reporter.

Q. As 216-B? A. Yes, the three page exhibit, 216-B.

Q. And that was a part of the original exhibit 216, that you mention in your heading. Is that right?

A. I think that is correct, yes.

Q. That is as of 1936?

A. The document isn't dated, but I think that is correct.

Q. Now, we come to the column which is headed "By Elvig, 1/1/36." Which totals $255,699.54. The value shown therein are computations you made from the records and files of these companies as of January 1, 1936, are they?

A. Except the last item, which is identical in all three columns, and which is qualified by Note 2.

Q. Can we get back to the third column headed "By Sandstedt's Letter to FPC". As of what date were those figures assembled or purport to cover what time?

A. I am not going to try to say what Mr. Sandstedt implied or had in mind when he wrote the letter.

Q. In the checking of this matter from the ledger sheets can you determine the approximate time or times included in that column?

A. Yes, we could identify certain items as being approximately December 31, 1941, I believe, yes.

Q. Is that equally true of the Bayles and Gazin tabulation, Exhibit 215, which you said you had before you?

A. I assume that was made from Mr. Sandstedt's letter and Mr. Sandstedt's letter does not give a date, as far as I can recall.

Q. Referring to Exhibit 215, with that column heading there. Would that give you any information?

A. Yes. This is also dated December 31, 1941.

Q. And in your checking of the ledger and work sheets did that appear to be the approximate date covered by those? A. Yes.

Q. Now, referring to your Exhibit 88-A. The first page is marked "Sheet 1 of 2". Have you that page of your audit, Exhibit 88-A? A. Yes, I have.

Q. This shows a column "overheads". I assume these are figures taken from the work order and in the journal vouchers and in the cash vouchers. Is that correct? A. No.

Q. Where did you take the title "Overheads"?

A. I believe I took it off the property ledger sheet.

Q. And that was just a ledger sheet classification, was it?

A. It is so identified on the ledger, as overhead.

Q. As overhead? A. Yes.

Q. On the same Sheet 1 of 2, of Exhibit 88-A, you have a column which is marked "Excessive Overhead". Does any computation appearing in this heading appear as "excessive overhead" in any of the books and records which you have submitted here in support of this audit, Exhibit 88 and 88-A?

A. It is a judgment figure based on examination of the records.

Q. That is your opinion, isn't it? A. That is right.

Q. You don't pretend then to be anything—You are placing in there an arbitrary allocation as to your own opinion of what constitutes overhead and what constitutes excessive overhead?

A. It is my judgment, but I won't say it is arbitrary.

Q. It is nothing that appears from the records and files of the defendant company here except as it specifically itemizes each charge that enters into "Overheads"?

A. It is not so recorded on these work orders and ledger sheets.

Q. It is not recorded as excessive overhead?

A. That is right.

Q. Referring now to the Aberdeen substation and on your Exhibit 88-A, Sheet 1 of 2, you show a footing of $9,729.23, of so-called excessive overhead. Is that right?

A. That is correct.

Q. And that is the item you are talking about so far as the Aberdeen substation is concerned?

A. No. I go to Page 2 beyond.

Q. I am coming to that. Then you carry that forward on Sheet 2, Page 2, of Exhibit 88-A, a total of $13,180.57, don't you?

A. Yes, but that total includes not only that figure that you mention but separate groups, each group limited by a double ruling.

Q. But it all has to do with Aberdeen substation?

A. That is right.

Q. Now, of course, in exercising your experience and judgment and training and arriving at a claim of excessive overhead, you looked at each voucher and each work order? A. I looked at sufficient to form an opinion.

Q. Now, will you refer to those that were in the ag-

gregate amount of $13,180.50? Will you show those to us now?

A. There is no voucher figure that will show that amount. That is computation. What I did was eliminate all of the overhead except 3%.

Q. I thought you said you went to the vouchers?

A. I said I looked at some vouchers, yes.

Q. If it had on these vouchers under "overhead", if it had "Rubber gloves for workmen" you would not think that was an excessive overhead, would you?

A. Most of these jobs you would not expect to find rubber gloves, because they are cold jobs.

Q. Would you or wouldn't you?

A. I don't believe they would be charged to overhead. They would be charged to incidentals.

Mr. Fellows: Objected to as argumentative.

The Court: It is somewhat argumentative. Sustained.

Q. Do I understand then that irrespective of what the charge is under the classification of overhead, you arbitrarily charge out everything over 3%?

A. I used the customary auditing procedure of testing, and I have never refused to satisfy myself that 3% was adequate.

Q. That was your opinion? A. That is right.

Q. Irrespective of what constituted the charge that was contained in overheads?

A. I don't admit that that charge is correct on the books.

Q. You don't know anything about that, do you?

A. I know considerable about it.

Q. Will you produce those vouchers that you did examine? A. I will bring out one for example.

Q. Did you examine more than one?

A. Yes, but I didn't keep the numbers of them.

Q. May I see it? You are now producing one voucher only, are you?

A. Yes, but it is representative voucher issued once a month.

Q. Do you mean this is the only one you examined?

A. No, I didn't say that.

Q. Now, will you produce some that were incidentals

in this overheads account? Not only supervision but incidentals? A. I don't think I eliminated incidentals.

Q. That is what we want to check. We want to know what you have eliminated.

A. I say eliminated what was identified on the work order as overhead. Incidentals was entirely separate item.

Q. You just arbitrarily discounted overhead classification 97% didn't you? A. No.

Q. What did you do? A. I left 3% in.

Q. And took 97% out. What did you do?

Mr. Benson: Explain what you mean by 3%.

A. I allowed 3% of all the other costs except overheads as overheads, and your figures ran anywhere from 3% up to 2'%.

Q. Certainly in making up your audit, Exhibit 88 and 88-A, you ran through the account items that were shown under the classification, overhead, didn't you?

A. I made sufficient test to satisfy myself, which is customary procedure.

Q. Did you find incidentals charged into the overhead account? A. I have separate caption for incidentals.

Q. In a different account than overheads?

A. If you will produce one of the exhibits I will show you what I mean.

Q. Will you show me the ledger page of the account which establishes these facts?

A. I am referring to the work orders themselves, not vouchers or ledger sheets.

Q. But you have the ledger for this station, haven't you? You have already presented those, haven't you?

A. Those are summaries in which accounts are combined.

Q. I observe that on Sheet 1, Page 2, Exhibit 88-A, you have a comment in the lower left hand corner, "Allocate Overheads 3%". What item or charges or classification did you include in such 3% overheads?

A. Supervisory expense of personnel whose time is not directly charged to construction, and expenses related thereto.

Q. What expenses do you include under your condition, related thereto?

A. I refer to expense of an engineer, in addition to his

time, would be perhaps telephone calls, perhaps stenographic help, travel expense, items of that nature.

Q. Are those the only items?

A. No, I don't intend to be limited.

Q. Will you think of them all, as you made this entry, "allocate overheads 3%" and prepared the tabulation Exhibit 88-A?

A. I stated that was my judgment. I didn't make an itemization of it.

Q. Have you stated all of the items or classifications?

A. I would not attempt to try to state all of them, no.

Q. You have a figure at the bottom of Sheet 1, Page 2, under the column entitled "Overheads" $11,179.23. From what record or file did you obtain that figure?

A. That figure appears as a debit in this schedule of mine on the line entitled "Work Order 404". It does not appear at the bottom, but it came from an item on the work order ledger sheet for work on order 404.

Q. Is that the same figure or item that appears on Defendant's Exhibit 214-I, which reads "Construction Overhead, WO 404, $11,179.23"? A. That is the same item.

Q. Did you look at work order 404?

A. I think I have seen it.

Q. Is work order 404 Defendant's Exhibit 55-19?

A. That is the construction authorization, yes.

Q. That is known in this case as work order 404, isn't it? A. Yes.

Q. And that has to do with the substation at Aberdeen, a part of the interconnection facilities?

A. It has to do with that and other items.

Q. That and other items. Now, in your preparation of Exhibit 88-A, you had to find out where that figure, $11,179.23 came from that was shown on Defendant's Exhibit 214-I, didn't you? A. I don't recall right now.

Q. Will you examine work order 404, which is Defendant's Exhibit 55-19, and indicate the source of that item of $11,179.23? A. You mean it is on here some place?

Q. Yes. How is it arrived at? You are familiar with work orders, aren't you? A. I have an understanding of them.

Q. You say that that work order 404 includes more than the Aberdeen substation? A. Yes.

Q. It includes one or two additional projects. Which?

A. This work order covered one project, as I understand it. The Aberdeen substation, the line from Aberdeen to Barnard, the line from Aberdeen to Gettysburg.

Q. Isn't that sum, $11,179.23 taken from work order 404, an addition of items? No. 60, incidentals, $15,045.40; No. 61, supervision, $15,506.95; and No. 62, interest, $5039.06?

A. I believe your assumption is wrong on that.

Q. What is it taken from then?

A. It could come from a record of the costs, and this is merely a summarization of the costs.

Q. Isn't the figure I have read to you in this the cost?

A. This is a construction estimate made in advance.

Q. Here is the estimate.

A. This is some clerical tabulation from some set of books.

Q. Did you check that out? When you prepared this audit, 88-A, did you check that out?

A. I didn't check it out when I made 88-A. I looked at the records a year and a half ago when I was in Huron.

Q. You can't remember whether you looked at the work order enough to know from what source the $11,179.23 arose? A. I made a test.

Q. When you started your audit, you started it with this substation at Aberdeen ledger sheet?

A. I worked from that sheet.

Q. When you came to that entry I have read, 11 thousand plus, work order 404, then did you go to that work order? A. Yes.

Q. And did you discover the [sourse] of that figure, $11,179.23? A. May I see the work order ledger sheet?

Q. Yes. A. I went back to this sheet, yes.

Q. What sheet are you looking at now?

A. The ledger sheet entitled, Work Order 404.

Q. And that is exhibit number? A. 55-31.

Q. That is one of the pages of Exhibit 55-31?

A. Yes. And on that group of sheets you will find, under the caption, Supervision, a great many references to vouchers which I have just shown you.

Q. After that you went back to what you call the work order ledger sheet? A. Right.

Q. Which is part of Defendant's Exhibit 55-31. Did you then check it back to work order 404, which is Defendant's Exhibit 55-19?

A. I made comparison if that is what you mean. That is not an accounting record, speaking of the work order.

Q. You didn't discover then where the figure that you used in your Exhibit 88-A, $11,179.23, came from?

A. It came from this ledger sheet.

Q. Did you discover in any record that is now before the Court the basis of that figure?

A. I have pulled out five or six vouchers which represent allocation of joint office expenses. I have pulled out a few more which I would like to show you which represent allocation of joint office payroll, and, generally, those are the items that make it up.

Q. How did you know which vouchers to pull?

A. I picked out references here.

Q. How did you know what references to pull?

A. References from work order 404 ledger sheet. I picked out items in which I expected to find excessive overhead existed, from the information contained in column entitled—

Q. Did you find a key number in the accounting system referring to so-called overheads? A. No, I did not.

Q. You say you looked at the work order, 404, Defendant's Exhibit 55-9, and you saw the charge of overhead, didn't you? Did you or didn't you?

Mr. Benson: You are showing him a ledger sheet.

Mr. Royhl: No. I am showing him the work order.

A. The work itself is not an accounting entry. It is merely an authorization for construction, upon which later is placed a tabulation to show the deviation from the anticipated cost.

Q. But it includes the actual cost, too, doesn't it?

A. An accountant would not go there for it.

Q. I am asking you if you did?

A. I looked at that, yes.

Q. And you found that incidentals were keyed to the number, 60, didn't you?

A. I see it now. I may have seen it then.

Q. You found supervision keyed to No. 61?

A. I see that.

Q. And you found interest was keyed to No. 62, didn't you? A. I see that.

Q. Now, by checking back on these records which are now before you here, you could determine what items were included in 60, 61 and 62, couldn't you?

A. Yes. After an exhaustive study I might find a mass of detail in which we could salvage some items, yes.

Q. Isn't it a fact that you found, after this exhaustive study of the accounts 60, 61 and 62, that they were distributed over the three projects on the basis of per centage?

A. I don't recognize that as three projects.

Q. Did you find that in any other record?

A. The work order is one project. The accounts were mingled.

Q. Did you find that distribution in other records?

A. I don't recall.

Q. I am showing you Defendant's Exhibit 55-19, work order 404, and the entries, 60, incidentals, $15,045.49; 61, supervision, $16,506.95; 62, interest, $5,039.06. And below that a summary showing distribution to account 1122.1, 25-47, overheads, $9,065.16; Account 1123.2, per centage, 36-26, $12,905.48; overheads. Account 1119, per centage, 38-27, overhead, $13,620.86. Did you look at those?

A. I see them.

Q. Did you look at them when you made this audit, Exhibit 88-A?

A. I looked at them a year and a half ago in Huron.

Q. And you arrived at this proposition of $11,179.23 was a part of those entries, didn't you?

A. Yes, I explained that.

Q. Now, then, the Aberdeen sub tabulation, which is shown by you on Sheet 1 of 2, Exhibit 88-A, contains the entry that I have mentioned, $11,179.23, and you knew that was a part of the account 1119, didn't you?

A. It is so recorded.

Q. Did you look at account 1119?

A. You mean sub-division 1119 in the work order?

Q. Yes? A. Yes, I examined that.

Q. You have under the title "Excessive Overheads" an entry of $9,729.23, haven't you?

A. Under this work order, yes.

Q. And that is Exhibit 88-A?

A. That applies only to work order 404.

Q. I am asking you if you show that entry on 88-A?

A. I show that item, yes.

Q. Then you also have an entry on Sheet 2 of 2, 88-A, of $1318.57, haven't you, $13,180.57?

A. Yes, the total of all of the previous items in that column.

Q. That includes both Sheets 1 and 2. Is that right?

A. That is right.

Q. Now, do I understand that as you worked out this amount you learned that the account 1119, $13,620.86, referred to Aberdeen sub?

A. I understand account 1119 is classification number for substations.

Q. In view of the fact we were talking about, in these accounts, the Aberdeen substation, that probably would refer to the work order then, wouldn't it?

A. Except the Barnard substation was also in that work order.

Q. Going back to No. 60, 61 and 62, it was keyed to the work order, wasn't it?

A. Yes. Those are the item numbers.

Q. So you knew when you were applying the 3% allocation of overheads, that the figures in the defendant's records, and the figures which are now before you, included incidentals, didn't you? A. Yes.

Q. And you knew it included supervision, didn't you?

A. I knew it included the kind of supervision which I called your attention to.

Q. And you knew it included interest, didn't you?

A. Yes.

Q. Now, then, in making your audit did you determine what part of that was incidentals?

A. I determined that an allocation such as was made on this work order, at least on a dollar gross, is not a representative allocation between various accounts of construction, including this work order.

Mr. Royhl: We move to strike the answer as not responsive.

The Court: Technically the question should be answered by yes or no, but we will let the answer stand.

Q. Have you anything in your work sheets or on the audits or tabulations, 88 and 88-A, that show the items that were incidentals under this accounting work order 404?

A. No.

Q. Did you check the vouchers under that key number in this accounting that is now before you, to determine what items were incidentals under that account?

A. I generally know the nature of them, yes.

Q. Will you answer the question, please?

Q. (Read) Did you check the vouchers under that key number in this accounting that is now before you to determine what items were incidentals under that account?

A. I believe I checked some of them.

Q. You did not check them all? A. Certainly not.

Q. Then you have no tabulation of what the amount of $12,100.89 in the estimate, or $15,045.49 for actual incidentals, you have no account of what constituted those incidentals? A. I have made no tabulation.

Q. Now, did you make a tabulation of key No. 61, Supervision, $15,506.95?

A. I ran through the vouchers and the ledger sheet.

Q. Have you a tabulation of what entries were included in that?

A. I am not sure. I will have to look. Yes, I have such a tabulation.

Q. Do you have that there before you?

A. Yes. Likewise interest.

Q. This includes both the sub-division, Supervision, which is key No. 61, on the work order, and includes, Interest, which is key No. 62 under the work order?

A. I suppose they are tabulated under that.

Q. That would be the only way you can go back to the vouchers to determine these things?

A. Why not, you could not determine it from the work order.

Q. Now, will you refer to work order 404, which is Defendant's Exhibit 55-19, and the entry key No. 61, Supervision, actual, $15,506.95. And the work sheet which you say you prepared and which you have now shown me in answer to my inquiry, has followed that key No. 61 and checks out on each specific key to the account, doesn't it?

A. It checks out on supervision. On interest I believe the person who made the tabulation of this work order overlooked an item which I picked up.

Q. In your audit of this account, in checking supervision under your work order 404, it checked out and you marked it O. K., didn't you? A. That is not my work.

Q. It is made under your supervision? A. Yes.

Q. Now, then, you found out each voucher, didn't you, and checked each voucher on supervision, didn't you?

A. That is right.

Q. Everyone of them, as keyed to these accounts of the defendant company, didn't you? A. That is right.

Q. And the sub-division, 61, supervision, checked out O. K. Is that right?

A. When I say yes, I don't mean to imply that I approve—

Q. O. K., it checked out?

Mr. Benson: Go ahead and finish your answer.

A. (Con't) —of the charge. It is without foundation.

Mr. Royhl: We move to strike out the latter part of the answer as not responsive.

The Court: I think we will let the answer stand.

Q. So far as the figures are concerned, it checked out O. K.? A. That is right. The arithmetic is O. K.

Q. Then you took the sub-division interest, which is No. 62, and followed the work order, 404, and the key to the entire account, and you checked that out, didn't you?

A. Yes.

Q. You examined every voucher, didn't you?

A. That is right.

Q. And it checked out O. K., didn't it, in arithmetic?

A. No, it didn't.

Q. There was a few dollars off?

A. $504.00 the person who tabulated this overlooked. That is why I say this is not an accounting record.

Mr. Benson: When you say this is not an accounting record—

The Witness: Work order 404.

Q. What do you find interest to be?

A. I find the interest recorded on the book to be $5,544.00.

Q. What do you find it to be in the work order, 404?

A. The amount tabulated on this actual column of work order 404, is $5,039.06, and it is a defective figure.

Q. That is, they didn't charge as much interest as they could have charged?

A. They balanced it with the work order.

Q. Will you answer the question?

Q. (Read) That is, they didn't charge as much interest as they could have charged?

A. It is a matter of charging, it is a matter of classifying charges.

Q. Can you answer the question?

A. It is not a fair question.

Q. You can't answer it in the form it is in?

A. I have answered the question the way I think it should be answered.

Q. Mr. Elvig, you said that under your audit, 88 and 88-A, you checked the classification account, interest, key No. 62. Is that right? A. Yes.

Q. And in your audit what did you find that that should amount to? A. I found that they had charged—

Q. What amount did you find in your audit that should be?

A. I found that the amounts charged to interest from these various log sheets and recorded in this work order, 404, $5544.00.

Q. Even dollars? A. I believe so, yes.

Q. I show you Defendant's Exhibit 220, and ask you if that is a part of your work sheets in checking the defendant's records concerning their account designated "overheads"?

A. Exhibit 220 is a statement upon which we have shown the page number on the work order, the voucher reference, the amounts charged for supervision and the amounts charged for interest, and there is another column which we have not discussed, headed "payroll". It reflects the amounts which have been recorded on the defendants' books. I make no representation as to the accuracy of those figures.

Q. You actually were auditing the figures then, weren't you?

A. Yes. These are the figures that appear on the books.

Q. Now, on Exhibit 220, you checked back on the ledgers, work sheet ledger and general ledger, and the work orders, and you found every voucher that referred to supervision, and every voucher that referred to interest, didn't you? A. Yes.

Q. And you tabulated that on Exhibit 220, didn't you?

A. Yes.

Q. Now, you have tabulated nothing on this Exhibit 220 that referred to the key account 60, incidentals, did you? A. No.

Q. Of course, you found out what those vouchers were, in running the account, didn't you?

A. I have a general idea.

Q. Did you make any work sheet of what they constituted, [itemised]? A. No, I didn't.

Q. What is the record marked Defendant's Exhibit 55-31?

A. The record identified as Defendant's Exhibit 55-31 consists of six pages entitled,—sub and line Ipswich to Barnard—and three columnar sheets with tabulations.

Q. Generally speaking what is the nature—are they ledger sheets?

A. They look like they had been removed from loose leaf ledger.

Q. Did you see those when you made your audit, 88 and 88-A? A. Yes.

Q. You say you did? A. Yes.

Q. And you used them in your audit, I take it? A. Yes.

Q. You knew that this item in 60, incidentals, was a part of the account "overheads", didn't you?

A. Yes, I believe it was included.

Q. By referring to the columnar ledger sheets, line from Aberdeen to Barnard, Ipswich, substations Aberdeen and Barnard, you could see a tabulation of the incidentals under that key No. 60, couldn't you? A. Yes.

Q. Now, it also contained the voucher number, didn't it?

A. That is right.

Q. So that by referring to this ledger and to the voucher

number you could check the voucher and the item that was included in that voucher, couldn't you? A. Yes.

Q. Did you do that?

A. No. The ledger sheet carries a column of explanation and it was not necessary to refer to the vouchers for most of the items.

Q. It was plain enough in the ledger sheet itself, wasn't it? A. That was the situation.

Q. You knew that was a part of the so-called overhead account, did you?

A. Yes. I knew that was included in that.

Q. Now, this account, as built up, was first a columnar sheet, wasn't it?

A. That is a summary record which supports the other record. Which is first I don't know.

Q. Will you look at these?

A. I can't tell in which order it was made.

Q. Part of it was on the columnar order, with the information in it, and part of it is on machine made sheet?

A. Yes.

Q. But it refers to the same account? A. That is right.

Q. There is no information on that portion of the account that is machine made, is there?

Mr. Benson: What exhibit is this?

Mr. Royhl: 55-31.

A. Yes, there is some information.

Q. But it doesn't show the nature of the item?

A. Some of that does, supervision, payroll, interest.

Q. Those are the only ones?

A. The rest of them are marked "Voucher".

Q. You knew where the vouchers were?

A. No. I was denied access to all but such records as were brought to me as I requested them.

Q. Did you request voucher No. 60 in addition to reference 5-555?

A. Probably not. I limited my requests as much as possible because I was having difficulty getting records.

Q. You noted it was Item 60. A. I see that now.

Q. But you didn't find out what that item was.

Q. I hand you Defendant's Exhibit 55-34.

Mr. Fellows: He hasn't answered your question.

A. I am wondering now if this record is complete. It seems to end in December.

Q. Of what year?

A. I don't think it shows, but it must be 1929. The last tabulation I see.

Q. This is 1930, isn't it? That is just a continuation on the machine? A. Yes.

Q. They had made hand written ledger sheet and machine made ledger sheet. Is that right? A. Yes.

Q. Now, referring to your entry that refers to column 5-555, that refers to the voucher, doesn't it? A. Yes.

Q. Did you look at that voucher?

A. I don't recall whether I did or not.

Q. I hand you voucher, Defendant's Exhibit 55-34, for $822.20, and ask you if you ever saw that before?

A. I don't know.

Q. Did you ask to see it?

A. I don't know that either, but I don't think I saw it.

Q. When you made the examination of the defendant's records and books in 1946, did you call for any vouchers of that kind?

A. I called for a lot of them, but I was having trouble to get them.

Q. Did you call for this voucher? A. I don't recall.

Q. Now that you know that this item was in the incidental account, is it an item that you would disregard in that overheads account?

A. There is nothing on this voucher to indicate where this gravel was used. Maybe I can clear up something.

Q. Would you say that keying it to the ledger account would indicate it was a part of that project?

A. When I said I didn't know where it was used, the voucher don't say where it was used. I mean, I don't know whether it was substation or out on the transmission line. It might have been even in the Barnard substation from all I can tell from that voucher.

Q. According to the records and books of the defendant company, it was on this project, this Aberdeen substation?

A. This also includes the Barnard substation.

Q. If it belonged to the Aberdeen substation it was a matter that should have been properly allowed, wasn't it?

A. If it was a charge applicable to Aberdeen substation it should be included.

Q. Did you make any effort to find out whether this was or was not?

A. I don't recall. I didn't make a detailed investigation of every voucher. It is not customary to do so.

Q. Then when you took the overhead account, so-called, in the accounting system of the defendant, and which you audited, you paid no attention to items included except supervision and interest. You have ignored the other items, have you? A. That is not correct.

Q. What other items except supervision and interest have you taken into consideration?

A. If you wish to refer to the next tabulation which covers Barnard and Ipswich, Aberdeen and Barnard, you will note that I have allowed the full allocation on supervision. That is, I have inserted the full figure in supervision and later taken it apart. I have allowed the interest to stand, and I have allowed indirect costs to stand, which I understand are items other than material and labor.

Q. We are talking about your account now, Sheets 1 and 2 of 2. Will you make your answer apply to those sheets?

A. I made an examination of this group of three sheets which cover a period of construction in 1929, and made a note of the items thereon, and I determined that practically all of the incidental items related to transmission line construction. I have allowed such items on transmission line construction, I believe.

Q. Will you show where you have allowed those?

A. I am sorry, but I believe the item of incidentals is included in the overhead.

Q. You mean you have included no part of that 15 thousand plus dollars in your Barnard to Aberdeen project, that being the incidental account?

A. I believe that has been omitted in the overhead.

Q. As I understand, in making your audit and preparing the Exhibit 88-A, Sheet 1 and 2 of 2, you have entirely ignored the item keyed to No. 60, incidentals, $15,045.49?

A. I believe it is omitted from my tabulation.

Q. Now, referring again to the items on work sheet 404, Defendant's Exhibit 55-19, which are keyed to No. 60, incidentals, $15,045.49; No. 61, supervision, $15,506.95; and

No. 62, interest, 5,039.06, you have made an allowance in lieu of that 35 thousand plus dollars, of a 3% amount. Is that right?

A. That would be an accurate statement. It does not admit the items of supervision and interest are—

Q. I am asking you what you allowed in lieu of those?

A. That is right.

Q. Will you tell us, from your audits, what that amount is under your 3% claim that you allowed in lieu of that 35 thousand? Included in [Acounts] 60, 61 and 62? In giving those figures will you give the pages and lines upon which it is shown in Exhibit 88-A?

A. It is not shown separately on the exhibit. It appears in the item "structures", $693.00.

Q. That is on Sheet 1 of 2?

A. Yes, next to the bottom line. Under "33000 volt substation", $83.00; under "interconnection facilities", $674.00, and on the page covering reconstructed book costs of lines from Aberdeen to Barnard and Ipswich, under the caption, "Total supervision" under column entitled "Balance for Barnard Line", a balance $838.90, to which should be added 50% for the amount deducted for the portion of the Barnard line not assigned.

Q. What figure on your audit are you using now for your 3% allocation?

A. Under the line "total supervision" and the column entitled "Net Barnard Line", an amount of $806.99—

Q. Where is that? That is the third column from the right hand side of the page?

A. Yes. Entitled "Net Barnard Line". An amount equal to half of that would be allowed in this column entitled "Deduct 1/3 from Barnard Line."

Q. One half of that?

A. Yes. Under the last column on the same line, $1663.25.

Q. That is in the last column, the figures under captioned column, "Net Ipswich Line"?

A. Yes. Then on the line entitled "Total Interest" and the column "Net Barnard Line" and amount $838.90, to which again 50% would be added for the amount eliminated under "Billed to Barnard Service". And also in the last column on the same line, "Net Ipswich Line", $1729.02. I believe that is all.

Q. Let me see if I get you correct. In lieu of the three items, 60, 61 and 62, incidentals, supervision and interest, as shown on work order 404, total $35,591.50, you, under that 3% provision, allow $7,308.10?

A. That is what the statement will show.

Q. I am speaking of your audit, 88-A? A. Yes.

Q. Did you allow all of the interest that was charged under account No. 62, in work order 404?

A. I allowed it to stand in the transmission line.

Q. Did you eliminate any of the interest charged under account No. 62, which totaled $5,039.06?

A. There was no separate amount set out for the substation, as I recall it.

Q. Then did you eliminate some of the interest charged to this joint account? A. Yes.

Q. How much?

A. To the extent that it applied to the substation.

Q. How much in dollars and cents?

A. I don't know as the figure appears anywhere.

Q. From your audit you can show, can't you, to the Court, what allowance was made for the account keyed as No. 62, under work order 404, which is $5,039.06?

A. I allowed $3110.00 to stand, of the amount shown on the books.

Q. Those were interest charges to the transmission lines?

A. That is right.

Q. You allowed nothing on the substation at Aberdeen?

A. That is right.

Q. That amount you say was 3 thousand plus?

A. The amount I allowed was 3 thousand plus. I don't remember the figure.

Q. When you were reading you said $813.90, 495.35, 739.02, which totalled $2987.37. Is that the amount of interest you allowed?

A. I allowed the difference between the amount, $311.61 and the amount you took from my work sheets and made an exhibit of. The amount shown in that schedule.

Q. Will you give it to me in dollars?

A. If you will give me the exhibit.

Q. I hand you Defendant's Exhibit 220.

A. The amount disallowed was $2434.00 approximately.

Q. $2434.00 disallowed? Will your account show what part of the key No. 61, supervision, $15,506.95, was dis-

allowed in dollars? As shown by your audit, Exhibits 88 and 88-A?

A. I don't think I can tell that without making a bit of a tabulation of it.

Q. Aren't there some entries in your audit that will show?

A. That is reflected. It is buried in this general field of figures.

Q. Then from the figures which you have given us as being allowed, you have allowed $7308.10, part of that being interest and the rest of it being supervision?

A. I haven't had an opportunity to write these figures down. I would rather not answer unless I can make a study of it.

Q. Do you want pencil and paper to check your audit on that?

A. If I could do it at the end of court I would do it then.

Q. Do you want a recess?

A. That would suit me, yes.

(At this time a recess of fifteen minutes was taken, after which the cross examination of the last witness proceeded as follows):

Q. (Read) Then from the figures which you have given us as being allowed, you have allowed $7308.10, part of that being interest and the rest of it being supervision?

A. I have no such figures here. I would like to explain what I have.

Q. You can't give it to us in dollars and cents?

A. Not in a lump sum, no.

Q. And the figures in your audit don't show that? I am referring to Exhibits 88 and 88-A?

A. There are quite a number of items enter into this.

Q. I am asking you if your audit shows the figures that will determine it?

A. Not in a lump sum, no.

Q. I am speaking now of the Aberdeen sub and of the Barnard line and the Ipswich line. I think they are reflected on work order 404? A. Yes.

Q. I am speaking of the figure shown on that work order as $35,591.50, under the classification "Overheads"?

A. Yes.

Q. Now, according to your audit, Exhibits 88 and 88-A, you have disallowed on the Aberdeen substation $13,180.57 of that amount. Is that right? A. That is right.

Q. That is correct, isn't it? A. Yes.

Q. And on the Barnard line you have disallowed the sum of $1774.61? A. Yes.

Q. And on the Ipswich line you have disallowed $3657.60? A. That is right.

Q. And in any of those instances you disregarded entirely, incidentals, didn't you?

A. I would like to state I overlooked it. I didn't have time to work on the records here. I worked from my work sheets which I made a year and a half ago at Huron, and I made it in the evening under pressure.

Q. When you told the Court this audit, Exhibits 88 and 88-A were true and correct audits, you were mistaken?

A. Yes, I admit it so far as incidentals are concerned.

Q. Then you want to include as being allowed on the Aberdeen substation the amount of $15,045.49, incidentals?

A. Yes.

Q. And those were not allowed in your audit, 88 and 88-A, exhibits?

A. That is right. But I must qualify that statement a little bit. The $15,500 applies not only to the interconnection facilities, it includes the Barnard substation, and it includes a portion of the Aberdeen substation, which is not part of the interconnection facilities. So I don't admit the entire 15 thousand dollars belongs to interconnection facilities.

Q. Will you indicate what part of this you do not admit?

A. It will be the proportionate share charged from this work order.

Q. You can determine that from these vouchers, can you?

A. I think you can determine from that.

Q. Will you do so in dollars and cents, the portion of the account No. 60, incidentals, totalling actually $15,045.49 what parts you did not include?

Mr. Benson: Does not include where?

The Court: As I understand, he admits they are all included but they are not included in that particular application.

A. I am stating that this incidentals figure, 15 thousand dollars, represents incidentals recorded on the books under work order 404, and that work order includes, in addition to the interconnection facilities, the Aberdeen substation and the Aberdeen Barnard line and the Aberdeen Ipswich line, and also includes the 33,000 volt station which serves the southern part of the system, and also includes the Barnard substation, and the applicable part of this 15 thousand dollars would be assigned to this. To that extent I don't think it should be considered as having been eliminated.

Q. Do I understand it is your contention there is some part of that that should be charged to the defendant's properties? A. That is right.

Q. And not to interconnection facilities?

A. That is right.

Q. Do you have that amount?

A. I don't think I can give you the amount precisely.

Q. Can you give us the items you claim, or the voucher numbers, or the vouchers, you claim cover that?

A. What I am saying is, on the item "Overheads" $15,045.49, a portion applies to each dollar of cost in work order 404, and included in those items is Barnard substation, so pro-rata, a part would be assigned to that. And also to the various items in the Aberdeen substation which are not claimed to be a part of the interconnection facilities.

Q. But you have not computed that and your audit does not show that. Is that right? A. That is right.

Q. So you can't tell us now what portion of the $15,045.49 you will allow on a conformed and reformed audit. Is that right?

A. I can't state right now. I will be glad to bring in figures which I think we can agree on.

Q. We are talking now about that portion of your exhibits 88 and 88-A that refers to reconstructed book cost of lines from Aberdeen to Barnard and Ipswich. Have you got that page? A. Yes.

Q. I notice you have a heading there, in about the fourth column from the left of the sheet, entitled "Deduct underbuild material, labor, etc." Have you got that? A. Yes.

Q. How much did you deduct for that?

A. In total, $4475.04.

Q. What did you find in the records and files of the defendant company, which you say are here before you, which makes that deduction?

A. Well, I will explain it. The first item—.

Q. I want to know what records and files you found?

A. I have the following list of materials which are materials which can't be used for a voltage—

Q. You are making an engineering study out of this, are you, now?

A. I have picked out materials charged to this work order which could not be used on 38,000 volt line.

Q. Will you refer to the records and papers which show that material?

A. I find among other things, reference to 1836 light pins and spur washers, value $405.45. I find 42 seven foot cross arms, value $48.84. I find an item not shown separately on your work order which we find in analysis, 13,000 volt insulators, $776.47.

Q. You say that is not on the work order at all?

A. It doesn't appear in there but it appears among items of material charged out.

Q. Where does it appear? You didn't find it was ever charged in, did you?

Mr. Benson: Wait a minute. You ask him one question.

Q. Where does it appear?

A. It appears as inventory adjustment. This line was apparently built and inaccurate charge of material made, and from the record it appears a physical inventory was taken after the line was completed, and this entry appears on voucher 9-53, for September, 1930, and in one column it shows physical inventory, presumably, and then in successive columns it shows the amount which had been charged out and the additional amount necessary to be charged out to reach the physical inventory.

Q. Will you give the items that are included in what you are talking about?

A. On this particular item we are referring to No. 1111, Westinghouse, 13,500 volt pin insulators, which says,

"Charged out, 412, to be charged out, 2606, price .3067, amount $799.26."

Q. You are reading from your own notes, are you?

A. Yes.

Q. Did you find anything in the records and files of the defendant company from which you took that?

A. I believe I can find it. It is journal voucher 9-53 for the month of December, 1930. I am referring to a page in the inventory form. And directly to the item of Westinghouse No. 1111 insulators.

(Defendant's Exhibit 55-35 marked for identification.)

Q. Do you refer to Defendant's Exhibit 55-35 when you comment about the item of $799.26? A. That is right.

Q. And do you refer to the item in particular appearing on that Exhibit 55-35, which reads, under column headed "Actual inventory of line", following down that line to 3018, No. 1111 Westinghouse 13,500 V pin insulators?

A. I think that is a typographical error.

Q. No. 412, No. 2606, under column appears 3067, under amount $799.26? A. That is right.

Q. Now, will you refer to work order 404, which is Defendant's Exhibit 55-19, and tell us whether or not any such item is included therein?

A. I don't find the item in this list.

Q. Was that the list you were working from and which made up the amount shown as Barnard line?

A. I think I testified before I usually work from the accounting records and not from engineering summary.

Q. Is there any such charge as that shown in the ledger pages of this project?

A. May I see the ledger, the work order ledger?

Q. This is the property ledger, is it not, Defendant's Exhibit 214-H?

A. I would like to see the work order ledger.

Q. Do you find any such item charged there?

A. No. This starts with the beginning figure, 1930, which is not detailed.

Q. What other records do you want?

A. I would like to see the work order ledger, 404.

Q. Is it Defendant's Exhibit 55-31? A. Yes.

Q. What are you referring to?

A. You asked me if that is Exhibit 55-31 and I said yes.

Q. Do you find any such an item as is shown on Exhibit 55-35 which you say should be deducted, referring to Westinghouse insulators?

A. I find this inventory adjustment in the total amount of $9922.35, charged to this work order.

Q. Do you find that on any books and records of the defendant? A. Yes.

Q. Where? Will you refer to it?

A. This journal voucher, 9-53, in the month of September, on the last page of the work order.

Q. That is where it is charged out?

A. That is where it is charged out to the work order.

Q. That refers to where there is a charge-out?

A. A charge from inventory to property.

Q. Do you find any place where it is charged in? Will you take this work order again, 55-19, and the ledger, and when I asked you concerning it, you referred to an entry of $47,340.00, and said it was not itemized. Is that right?

A. That is right.

Q. Now, isn't the work order that you hold in your hand, 404, Exhibit 55-19, that entry?

A. I never understood that that was an accounting entry, and I don't believe it is.

Q. Will you examine that and see if that refers to the same entry?

A. May I have the work order ledger sheet again? May I explain that the way I understand—

Mr. Royhl: Read the question.

Q. (Read) Will you examine that and see if that refers to the same entry?

A. I have tried repeatedly to explain to counsel that the work order is the engineer's estimate of what a construction project will cost, and later, when the job is finished, some engineering clerk or accounting clerk has tabulated the cost and checked them to that column for comparison with the original estimate. I do not understand it is an accounting entry. Never have. I would never honor it as an accounting entry. If there is a conflict between that and the books, the books stand.

Q. Do you find any place where the item you say was charged out was ever charged into this project?

A. Certainly.

Q. Where?

A. In September, 1930, journal voucher 9-53, included in inventory adjustment, 9900 and some odd dollars.

Q. That was charged out?

A. That was charged out of stores and into the work order, from your warehouse to your construction project.

Q. You say this is included in that?

A. If you will compare the total amount of your work order, the final balance, with the total amount shown on your work order, where the engineering clerk or someone has, you will find they are practically identical, including the 9 thousand dollar adjustment.

Q. If they were charged into this project shouldn't it be shown on the property ledger account?

A. You have a gap between the two. There is no reference that I can find here.

Q. Now, as a practical matter, if you served Leola and Wetonka off of a 40,000 wire, or a 22,000 wire, would you have to have substations at those towns?

A. Yes, I believe so.

Q. Did you find any charge in the interconnecting facilities for substation at Barnard?

A. I am not sure I know just exactly what you mean.

Mr. Royhl: Will you read the question?

Q. (Read) Did you find any charge in the interconnecting facilities for a substation at Barnard?

A. Do you mean is there a cost included in this contract representing facilities at Barnard?

Q. A substation facility at Barnard?

A. I don't believe there is.

Q. And in serving Barnard and Wetonka, stations of that size, the charge would have to be reduced, would it not, to 6900?

A. That depends on where the power supply came from.

Q. You would not serve towns of that size with a load heavier than 6900, would you?

A. I think that is rather questionable.

Q. I am asking you what your opinion is?

A. Depending on where the town was located. If it is located on 6900 volt line, it would be serviced with 6900. If it happened to be on a trunk line we would step down to it, either at that point or some other point.

Q. You would step it down to 6900?

A. Or we would probably be inclined to step it down to 2300. I don't know.

Q. Then you would have to have a substation?

A. What voltage are we coming in at?

Q. At a voltage of 40,000 or 22,000?

A. Oh, yes, then you would.

Q. You would have to have a substation? A. Yes.

Q. You would have to have one at Wetonka and one at Leola?

A. You would have to take care of it at both locations, but one could do for the two.

Defendant's Exhibits 222 through 225 were received in evidence. They are the plant ledger records of Dakota Public Service Company and its predecessors covering transmission facilities from Wishek, North Dakota to the North Dakota-South Dakota state line; from the same state line to Bowdle, South Dakota; from Selby, South Dakota to Bowdle, South Dakota; and from Wishek, North Dakota to Napoleon, North Dakota, respectively. In each case the original entry on said plant ledger records is the appraisal by the North Dakota Railroad Commission made in 1936, which in each case includes overheads at 10.3% of the appraised cost.

Q. I show you Defendant's Exhibits marked 222 to 225, both inclusive, and ask you if those are part of the records which you produced here today for the plaintiff? A. Yes.

Q. And they are part of the records and files of the companies indicated on their face? A. Yes.

Q. Do you still use these plant ledger records as the records of the plaintiff for station ledger records?

A. We transcribed them on our other system of accounts.

Q. In transferring them, down to the dates that are shown here, has there been any changes made?

A. I don't recall.

Q. Can you tell by looking at these?

A. No, except such changes as might have occurred in the three months that the defendant kept our records for us. That is between October 19 and January 31st.

Q. Otherwise they are carried on the plaintiff's books now in the same way they are carried there?

A. Same account numbers.

Q. I mean the amounts and the records as shown there?

A. These amounts have been transcribed on our ledgers here subject to events in the ordinary course of business since that date.

Redirect Examination: by Mr. Benson.

Q. Mr. Elvig, you were asked during your cross examination concerning certain items called incidentals, on work order 404, which you said you had overlooked, and then you said you wanted time to look at your work papers and at Exhibit 88 and 88-A. Last evening you went over those Exhibits 88 and 88-A [against], did you?

A. Yes. I did.

Q. Did you find the item of incidentals, the figures you inserted in 88 and 88-A, with reference to incidentals, in the defendant's account, on work order 404? A. Yes, I did.

Q. Will you explain to counsel where the item of incidentals is handled, and how much you put in there?

A. I will first refer to the third page, which covers the transmission line from Aberdeen to Ipswich and Aberdeen to Barnard.

Q. Will you point out on the page, giving the column so counsel can follow, what items you entered in there from the defendant company's books, which were included in the incidentals concerning which counsel interrogated you?

A. In the first column, entitled "Work Order 404", just above the center of the page, is the figure $9287.58, opposite the caption entitled "Other Costs". The term "Other Costs" is synonymous with the term "Incidentals". It represents the same item.

Q. How much did you enter on the third page of Exhibit 88-A as "Other Costs", which you say were incidentals, or were treated as incidentals by the defendant?

A. $9287.58.

Q. On that page, that entire page or any other page of Exhibit 88-A, did you enter any other items that were in the $15,045.49, incidental items, concerning which Mr. Royhl interrogated you?

A. The balance of that figure would represent Barnard and Aberdeen substation, and to the extent it applied to the Aberdeen, it is included in the figure on Page 1 of 88-A, opposite the line marked Work Order 404, in the amount of $11,179.23.

Q. Of the amount, $15,045.49, will you tell us how much was included in the figures in your Exhibit 88-A?

A. The record is not clear on that. It is just about $5,000.00. The record doesn't bear close investigation. They have lumped their figures so you can't trace it.

Q. Mr. Royhl: He is asking you how much?

The Witness: $5,000.00.

Q. You put in $9,287.58, in the column you described on the third page under 404? A. Yes.

Q. Can you tell how much of the incidentals of $15,045.49 is in that figure of $11,179.23, on page 1 of Exhibit 88-A?

A. $5,000.00.

Q. So you are within how much of the $15,045.49?

A. The remaining item would apply to Barnard substation so it is all covered.

Q. It went with the Barnard substation? A. Yes.

Q. So you say this $15,045.49 was in your figures on that exhibit? A. That is right.

Mr. Royhl: He just said nine thousand dollars was not in there.

Q. They were put in this exhibit? A. Yes.

Q. During your cross examination you started to say that in your analysis of cost of the Aberdeen substation you allowed "no interest". Counsel interrupted and you did not state whether you didn't allow any interest in the construction of the Aberdeen substation?

A. This substation was a rebuild of an old substation, in a new location, and in part was in service at all times. The item entered on the substation work order in the amount of $11,179.23, was marked merely "overhead" and

was not split between supervision and incidentals or overhead, and there was no opportunity for me to spread back the interest or spread back the charges of construction. Ordinarily a substation of that kind of units would go into service quite promptly.

Plaintiff's Exhibits 55-36, 55-37 and 55-38 were received in evidence.

Q. Mr. Elvig, will you see if you can pick out of Exhibit 55, the records of the defendant joint office payroll voucher, which shows anything about whether defendant allocated part of the engineer's salaries to work order 404, by direct apportionment? A. I have one for April 30th.

Q. Will you get the ledger, whether it is work order ledger or property ledger, I don't know which, where that would be entered under the account of this work order 404?

A. That is part of the record.

Q. Do you have a ledger sheet? A. Yes, I have it.

Q. What is the ledger sheet, what exhibit is that in?

A. That is Defendant's Exhibit 55-31.

Q. I show you voucher which you handed me marked Plaintiff's Exhibit 55-36, and ask you if that is a voucher which you produced, which you say is referred to in the ledger sheets which you just produced and described?

A. Yes, it is.

Q. Can you tell from the accounting records in Exhibit 55, what engineers' salaries were dealt with in this Exhibit 55-36, which you say were apportioned to work order 404? A. Yes.

Q. Have you the records before you from which you can tell? A. Yes.

Q. What is it?

A. It is entitled "Joint Office Payroll" I believe. This page I am looking at is payroll distribution.

Q. Now, will you tell us which engineer's salary referring to on payroll distribution sheet, marked Plaintiff's Exhibit 55-37, is also shown on Plaintiff's Exhibit 55-36?

A. I refer to the page for W. H. Frost, entitled joint superintendent.

Mr. Royhl: What is the amount in dollars and cents you refer to?

The Witness: The amount of Mr. Frost's salary for April 30, which was charged to work order 404, is $38.88.

Q. Is that item included in an item on the ledger sheet which is Defendant's Exhibit 55-31?

A. Yes. It first goes to a recap sheet where it is one of three items. $38.88 is the first of four items totalling $102.12, which is the amount which appears on Exhibit 55-31 on the back of the third page, under voucher reference J-41.

Q. Will you see if you can produce records showing what was done with the balance of Mr. Frost's salary during that month?

A. I have made a tabulation.

Q. What record have you produced?

A. I have Plaintiff's Exhibit 55-36, which is a summary of the payroll book, which I believe was 55-37.

Q. Can you tell from the payroll book, 55-36, what was done with the balance of Mr. Frost's salary that month?

A. Yes.

Q. What was done with it?

Mr. Royhl: Objected to as incompetent, irrelevant and immaterial; not proper redirect examination; not within the issues in this case.

The Court: Overruled.

A. It was spread over a number of accounts as indicated on Exhibit 55-37.

Q. In those accounts that it was spread over, do you find more spread to this work order 404? A. No.

A. (Con't) This ledger, the payroll ledger sheets, is spread among various accounts on a recap sheet. Among them are charges to North Dakota Power & Light Co. and Northern Power & Light Co., and other work orders and to Account 920, joint office expense.

Q. Can you produce records showing whether the amount that was spread to Account No. 920, or any portion thereof, was also charged to work order 404? A. Yes.

Q. Will you produce those records?

A. Here is voucher No. 532 from the defendant's records.

Q. I show you Plaintiff's Exhibit 55-38, and ask if that is voucher 5-32, to which you just referred? A. Yes.

Q. Can you tell from that whether the joint office expense was [allocation], or any portion thereof, to those jobs under work order 404? A. Yes.

Q. Plaintiff's Exhibit 55-38 shows the distribution to 404 of a portion of the balance of Mr. Frost's salary, in addition to that shown in Plaintiff's Exhibit 55-36, and for the same period as shown in Plaintiff's Exhibit 55-36?

Mr. Royhl: Objected to as leading and suggestive; hearsay; self serving, incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Mr. Frost's salary, in the amount of $136.20, in April, was charged to Account 920, which is joint office salary account for executives. This portion of his salary, together with the salaries of several other engineers, president, vice president, treasurer, and the superintendent of the power plant, and the general auditor, and probably eighteen office clerks.

Mr. Royhl: Are you testifying from a record or are you [testimony] from your own knowledge?

The Witness: From a memo which I made from this payroll record which is a part of defendant's—

Mr. Royhl: You are not testifying to any specific exhibit or the contents of it?

Q. He means any particular exhibit?

A. Exhibit 55-37 is one page of it. But there are pages in there for the month of April, adjacent to this one.

Mr. Royhl: We renew our objection.

The Court: Overruled.

A. (Con't) —were then redistributed on the formula which was in use throughout the year, or, I believe, the entire period of work order 404, and also work order covering other interconnection facilities were under way. This formula was about like this—

Q. Never mind the details of the formula. Just state what happened to the balance of Mr. Frost's salary for the same period. Whether it was in the joint pot that was distributed over this job?

A. Mr. Frost's salary was in the pool to the extent of $136.20, in a pool which totalled $22,000.00, in round numbers, of joint expense. And this $22,000.00 was split in this particular month, 1/2 to construction, including work order 404, and the other half remained as expense.

Mr. Royhl: We move to strike out all of the evidence in the answer of the witness to this question for all of the reasons urged in the objection thereto. And for the further reason it is very apparent now it is wholly conclusion and opinion of the witness, and not based upon any record or records in evidence, and no probative value.

The Court: Motion denied.

Q. Mr. Elvig, in Defendant's Exhibits 55-9 and 55-17, we have a report of Northwestern Public Service Co. to Federal Power Commission, on Form 1, for the various years referred to when the exhibits were offered in evidence. Can you tell us what rate of the cost of construction was charged, according to those reports, for overhead?

A. Yes, I can tell.

Q. Will you refer to the page of the report and tell us what the amount is that is charged for overhead?

A. I refer to page 528. I have made an abstract for several years.

Q. One typical year.

A. This is FPC-1 for the year ending December 31, 1937, in which they say that they used 3%.

Page 528 of Defendant's Exhibit 55-17, which was received in evidence (R. p. 647, supra), sets forth a general description of the construction overhead procedure as called for on page 527 of that exhibit. The following information appears under that heading:

Basis for Percentage of Administrative and General Expense transferred to Construction, year 1937.

Payroll	$ 7200.00
Miscellaneous	500.00
(A) Total Estimated Expenses Assignable to Construction	$ 7700.00
(B) Total 1937 Construction Budget Subject to Administrative & General Expense	$210,400.00
Percentage of Administrative & General Expense A + B	3.65%
Use for year 1937	3.0 %

Page 527 of said Exhibit contains item 561 of the report for 1937, which required information as to overhead accounts for the year 1937. The Exhibit shows the word "none" in Subdivision A of such item, which called for the balances, charges, and clearances in the overhead accounts during the year 1937. Subdivision B called for construction overheads related to cost of construction, including the percentage of overheads to construction costs, and reference is made thereunder to the information set forth on page 528. The same type of information was called for in Defendant's Exhibits 55-9 through 55-16 for the respective calendar years covered by said Exhibits.

Mr. Royhl: We move to strike that out as incompetent, irrelevant and immaterial to any question now in evidence as to what figure they used in 1937, this construction having been made in 1929 and 1930; not within the issues in this case.

Mr. Benson: I would like to call the Court's attention to the fact that overheads don't change in the construction of these lines.

The Court: Regardless of whether they change or not, in the present condition of the record the evidence is compe-

tent. If it has changed, that is up to the other side to show. Objection overruled.

Q. Can you tell the total amount that went onto the company's books, the defendant company's books, for the work in this work order, 404, including the total of $35,591.50, which Mr. Royhl designated as overhead?

A. Yes.

Q. What is the total?

A. $35,591.50 is the total of the overheads to which he has referred.

Q. What is the total charged to these jobs under 404, for overheads, and everything else? A. $182,126.00.

Q. And some cents? A. 60 cents.

Q. Deduct the $35,591.50 from that.

A. I have a figure of $146,535.10.

Q. Can you tell us quickly what percentage of that last amount named $35,591.50 is? A. That is roughly 25%.

Mr. Benson: That is all.

Recross Examination: by Mr. Royhl.

Q. Will you indicate on the records of the defendant where $35,591.50 is charged to overhead?

Mr. Benson: We will admit it is not charged to overhead. It is charged, $15,045.49 to incidentals; $15,506.95 to supervision to which you referred; $5,039.06 to interest, to which you referred. You lumped them all together at one time in your cross examination as overhead.

A. This is in work order 404, which I believe is an exhibit.

Q. You were asked for work order 404, being Defendant's Exhibit 55-19?

A. You asked me to produce this record, yes.

Q. Will you indicate there whether there is any charge to overhead in the amount of $35,591.50?

A. Yes. It is the last typewritten figure in the column entitled "Amount Estimated."

Mr. Benson: What does it show?

A. The column has three figures in it. Over the top of the column is the word "Overheads." The total figure is $35,591.50. Under that is 24 and some per cent.

Q. That refers to the tabulation of the sub account, No. 60, 61 and 62, does it not, on this same exhibit?

A. I assume it does, yes.

Q. And it includes incidentals, supervision and interest, doesn't it? A. That is right.

Q. Now, you have added on the page which is entitled "Reconstructed Book Cost of Line from Aberdeen to Barnard," etc., a part of Exhibit 88-A, in the column "Work Order 404" "Other Costs of Line", an amount of $9287.59. In what way, if at all, does that affect the figure $9729.23, which appears on Sheet 1 of Page 2, under the column "Excessive Overhead"?

A. May I ask my attorney, is this proper cross examination now?

Mr. Benson: Go ahead. He has asked you to explain the whole thing. Go ahead and explain.

A. The figure 9287.58, on page 3, has no bearing on the figure $9729.23 on Page 1.

Q. Does the audit, Exhibits 88 and 88-A, still reflect what you claim are excessive overheads?

A. So far as page 3 is concerned, and page 4, it stands. So far as page 1 and 2 are concerned, if the ledger sheet had supported that item of $11,000.00 between incidentals, supervision and interest, I would have accepted the item of incidentals which I understand would be about $5,000.00. The ledger sheet was not so marked.

Q. Do I understand that when you spoke of incidentals here in the amount that I have given you, $9287.58, and you referred to the line "Other costs" under column "Work Order 404", does that affect the figures in the column in Plaintiff's Exhibit 88, under title "By Elvig as of January 1, 1936"? A. No.

Q. In Plaintiff's Exhibit 88, captioned "Comparison of Values Upon Interconnection Facilities", does your testimony concerning $9287.58, incidentals, as you have testified here, in redirect examination, does that affect any of the values in the column headed "By Elvig as of January 1, 1936"? A. Not based on the defendant's records.

Q. So is that because you haven't checked the items that you say are incidentals in that amount of $9287.58?

A. Because there is no continuity in the defendant's records between that figure and the one of the substation. I don't want to assume the condition other than stated on the ledger sheet.

Q. What disposition have you made then of the incidentals that total that amount of 9 thousand plus?

A. There are no incidentals shown on the ledger sheet.

Q. In the records and files of the company, then?

A. If you will produce the continuity between the work order and the ledger sheet for me.

Q. As I understand you told the Court you had checked these records and files and you had prepared this audit, Exhibit 88? A. Certainly I checked the records.

Q. Do I understand you are entirely throwing out and disregarding all items in work order No. 404, which is designated incidentals, $15,045.49?

A. I testified before that 98 hundred plus dollars of that is in transmission line schedule on Page 3 of 88-A. That a further amount is in Barnard substation by allocation. And that the amount which presumably would apply to the Aberdeen substation is buried in a figure of $11,000.00, which is labelled "Overhead". I don't understand incidentals to mean overheads in my understanding of utility accounting.

Q. Because it is called incidentals you have disregarded it?

A. Because it is called overhead I have disregarded it.

Q. Because incidentals is part of the so-called Overheads?

A. There is nothing about the ledger sheet to indicate what the 11 thousand dollars is except to call it overheads.

Q. You testified that pages 3 and 4 of this audit, Exhibit 88-A, stands on excessive overheads. That as to pages 1 and 2, had the ledger sheet supported the items of incidentals, you would not have included that as an excessive overhead. Is that right?

A. I don't remember my testimony. My thought was that if there had been an amount shown for incidentals I would have recognized it for what it was worth.

Q. Could that have been determined by a review of the

journal vouchers and the work orders and the cash vouchers? A. No, sir, I don't believe so.

Q. The next question is, have you tried, by checking those?

A. Yes. I tried over here last night to tie those in and it was physically impossible to do it.

Q. Did you look at all of the journal vouchers and cash vouchers? A. That is not necessary.

Q. Mr. Elvig, you testified on redirect examination that Defendant's Exhibit 55-17, being report to the Federal Power Commission, for the year 1937, included a schedule showing construction overhead of 3%. Do you know whether or not that classification included interest during construction? A. I assume it did not.

Q. That is, you say that that would be a regular policy and procedure under the Federal Power Commission ruling?

A. I assume interest during construction would be a separate item.

Q. And an item that would be charged to cost of construction? A. Where justified, yes.

Plaintiff's Exhibit 92 was received in evidence consisting of a photostatic copy of the minutes of a special meeting of the Board of Directors of plaintiff duly held October 2, 1945, with a majority of directors present, and is in part as follows:

* * * * * * *

The President referred to the action taken by the Board at its meeting held August 31, 1945 with respect to the purchase of the outstanding securities of Dakota Public Service Company and Knife River Coal Mining Company, the liquidation of Dakota Public Service Company, and the issue of a $6,500,000 promissory note, $4,000,000 of First Mortgage Bonds, 3% Series Due September 1, 1970, and 223,351 4/6 shares of common stock, and presented to the meeting copies of the following documents:

* * * * * * *

He further stated that the Securities and Exchange Commission had set the application of United Public Utilities Corporation for authority to sell the securities of Dakota

Public Service Company and Knife River Coal Mining Company for hearing on October 9, 1945.

• • • • • • •

On motion duly made and seconded, the following resolutions were adopted:

Whereas the Company has by agreement with United Public Utilities Corporation dated July 2, 1945, contracted to purchase all of the outstanding securities of Dakota Public Service Company;

Resolved that the officers of this Company be and they hereby are authorized to take all action necessary to complete said purchase as contemplated by said agreement; and further

Resolved that immediately upon the completion of said purchase the officers of this Company, or any of them, be and they hereby are authorized and instructed to vote all shares of stock so acquired in Dakota Public Service Company for the election of a new Board of Directors to consist of the following five named persons; namely, Messrs. R. M. Heskett, C. W. Smith, F. R. Gamble, W. L. Hayes and H. N. Elvig, and it is recommended that said Board of Directors of Dakota Public Service Company elect the following persons as officers of that Company, namely:

R. M. Heskett—President
C. W. Smith—Vice President
F. R. Gamble—Secretary and Treasurer
W. L. Hayes—Assistant Secretary;

and further

Resolved that it is desirable and advisable that Dakota Public Service Company be completely liquidated on the same date that its securities shall be purchased by this Company, and that on that date all the property of Dakota Public Service Company be transferred and distributed to Montana-Dakota Utilities Co. in complete cancellation of the outstanding securities to be purchased from United Public Utilities Corporation to consist of 8,370 shares of common stock, with-

out par value, $1,000,000 of First and Refunding Mortgage Bonds Due October 1, 1946, $2,500,000 of Notes Payable due July 1, 1949 and a $1,335,794 Income Note Payable due July 1, 1949; and all the property and assets of Dakota Public Service Company shall be so transferred and distributed to Montana-Dakota Utilities Co., subject to and charged with all debts and liabilities of Dakota Public Service Company of every kind and nature, except the securities to be cancelled upon the liquidation of that Company hereinbefore referred to; that the officers of this Company are hereby authorized and instructed to execute all documents and to do all other acts in the name and on behalf of this corporation which may be necessary or advisable fully to complete the liquidation of Dakota Public Service Company and the acquisition of its assets by Montana-Dakota Utilities Co.

On motion duly made and seconded, the following resolutions were adopted:

Whereas this corporation has by agreement with United Public Utilities Corporation dated July 2, 1945, contracted to purchase all of the outstanding securities of Knife River Coal Mining Company;

Resolved that immediately upon the acquisition of said securities the officers of this Company, or any of them, are hereby authorized and instructed to take all action necessary to elect a new Board of Directors of said Knife River Coal Mining Company to consist of the following three persons; namely, Messrs. C. W. Smith, F. R. Gamble and W. L. Hayes; and it is recommended that said first Board of Directors elect the following persons to the following offices in said Knife River Coal Mining Company, namely:

C. W. Smith—President
W. L. Hayes—Vice President and Assistant Secretary
F. R. Gamble—Secretary and Treasurer

DAN S. HELMICK, having heretofore been sworn was recalled by the plaintiff and testified as follows:

Direct Examination: by Mr. Benson.

Plaintiff's Exhibits 55-39 through 55-43, inclusive, were received in evidence over the objection of defendant that the exhibits are immaterial, not within the issues of the case, appearing to be and concerning a year and period remote from the time covered by the complaint. The Exhibits are as follows:

Turn to Card 20 for
Plaintiff's Exhibits 55-39
through 55-43, inclusive
(pp. 863,865, 867, 869, 871)

Q. Now, I show you the map, Plaintiff's Exhibit 15, and ask you in addition to what you were asked before, which portions of this map do you propose to refer to in your testimony?

A. All the portions pertaining to North Dakota Power & Light, shown in red; Northern Power & Light, shown in yellow; and the interconnecting facilities between Northwestern Public Service Co. and the Northern Power & Light Co., between Aberdeen and Barnard, Aberdeen and Ipswich, Highmore and Gettysburg.

Q. I notice that on the colored lines, using them as a base, there are what look like black lines drawn off at angles, which come to a point, and using the colored line as a base, those black lines form a triangle in many instances? A. I notice it also.

Q. Now, at the apex of each of those triangles there are certain figures. Did you check all of those figures against the inventory and appraisal prepared by Mr. Wiley to which reference has been made? A. I did.

Q. And the figures on the map are a correct representation of the figures as found in the appraisal and inventory?

A. To the best of my knowledge.

Q. Will you cite what those figures at the point of the triangle mean? Will you take one of them and explain what it is?

A. The easy one is in the upper left hand corner, from Beulah south to Glen Ullin junction. The top figure, 30.4, which means 30.4 wire miles. Then there is the next figure, 3 #6 C.; that means three #6 standard copper. Then there is a rather indistinct 1/4 assembly. 1/4 steel messenger wire. Then that one is rather indefinite. Then there is 40 ACSR. 40 Aluminum Conductor Steel Reinforced. Then there is the figure, 38 KV, which means 38,000 volts. That is typical of all of the others.

Q. Where the abbreviation "Mi" appears on all of those triangles, it means wire miles? A. Right.

Q. What do you mean by wire miles?

A. I might say, for example, the road miles between Bismarck and Beulah is one thing. The high line or transmission line is what we call wire miles. The actual mileage for transmission line and the wires thereon between those two points.

Q. Are there any other designations as to the kind of wire anywhere on the map that you might want to explain, other than the one which you used here, 6 strand copper. Will you take another one which is not copper?

A. The next line south from Glen Ullin, south, is 3 #8 stranded copper. Coming down from Beulah to Bismarck is 4#0 aluminum conductor.

Q. How is aluminum distinguished from copper?

A. ACSR. There is one other size of wire that is generally used, and that, for example, is on the line we will say from Ipswich to Aberdeen, 00 copper—should say aluminum. They are about the four sizes of transmission wire used on this transmission system.

Q. Is there anything on this map which you have verified against the inventory as to size or capacity of generating station, or did you get that information from other sources?

A. There is nothing shown here on generating stations at all. That comes from other sources, such as Federal Power Commission reports, etc.

Q. You are not using the map for that?

A. No. The map is to show transmission lines and to give a general picture to show statistics.

Q. Where did you get the information that you have on the map concerning the interconnection from Gettysburg down to Highmore, if there is anything on the map concerning that?

A. The information is not complete on the map. I can tell you the information if you care to have it, of anything we have used, the authority for so using it.

Q. I believe you stated at the time of your first appearance on the stand in this case that you had some acquaintance with the system of Northern Power & Light Co.?

A. That is correct.

Q. You stated you acquired that in making inventory and appraisal of that property in 1927? A. 1926.

Q. Did you hear the testimony of Mr. Elvig? A. I did.

Q. Have you examined the exhibits that have come in from his testimony? A. I have.

Q. You have examined various other exhibits in this matter. Have you examined all of the load diagrams that

were heretofore introduced and those introduced this afternoon?

A. I think I have, but if you want me to take the time to check it, I would be glad to be able to. I don't think it is necessary. I am quite positive I have looked at them two or three times.

Q. Do you have a copy of Plaintiff's Exhibit 55-8?

A. Yes.

Q. Do you have a copy of Plaintiff's Exhibit 82-9?

A. Yes.

Q. Do you have a copy of Plaintiff's Exhibit 82-10?

A. Yes.

Q. Do you have a copy of Plaintiff's Exhibit 82-12?

A. Yes.

Q. Have you a copy of Plaintiff's Exhibit 87?

A. I don't seem to have 87.

Q. I will give you a copy. Do you have before you Defendant's Exhibits 82-22-23-24? A. Correct.

Q. Do you have before you Defendant's Exhibits 82-19, 20 and 21? A. Yes.

Q. Do you have before you Plaintiff's Exhibit 82-13?

A. Yes.

Q. Do you have before you Plaintiff's Exhibit 53, being collection of load diagrams put in under that number?

A. Yes.

Q. Will you give the dates of those load diagrams?

A. August 28, 1937. One labelled December 21, 1937. On the reverse side of the face. One dated 12-21-37. One dated July 16, 1938. Another one July 16, 1938. Another one dated December 20, 1938. Another dated December 20, 1938. Another dated December 6, 1938. Another one dated December 29, 1939. Another one dated December 19, 1939. Another one dated July 9, 1940. Another December 18, 1940. Another one on the same date. Another one August 5, 1941. Another one December 22, 1941. Another one December 31, 1942. Another one December 22, 1942. Another one December 21, 1944. Another one December 20, 1944. Another December 14, 1945.

Q. Did you check the location of transformers on Plaintiff's Exhibit 15, the map?

A. No. I did not check, personally check, the transformer

information shown at Bismarck, Beulah, Mobridge, Bowdle, Wishek and Ellendale.

Q. Did you check any of the transformers indicated on the map as to the high or low side?

A. No, sir, not personally.

Q. You have before you Plaintiff's Exhibits 19, 20, 21 and 22?

A. Plaintiff's Exhibits 19, 20, 21 and 22.

Q. You have Plaintiff's Exhibit 32 before you, which is certified copy of the following letters: Letter dated February 2, 1942, to Federal Power Commission by Northwestern Public Service Co., A. B. Sanborn; Dakota Public Service Co., by C. L. Sandstedt. Carbon copy of letter to Leon M. Fuquay. Letter dated February 24, 1942, on Northwestern Public Service Co. stationery, to Federal Power Commission, signed by C. L. Sandstedt, and document entitled—"Reason for making rate schedule effective" dated February 25, 1942, signed by Northwestern Public Service Co., by C. L. Sandstedt. A. I do.

Q. Do you have before you Plaintiff's Exhibit 55-4, A, B and C? A. I do.

Q. Do you have before you Aberdeen generating station log sheets, part of the exhibit designated Exhibit 55?

A. It is on the floor.

Q. You saw some of those once upon a time in Huron?

A. Yes.

Q. And you have examined them here in Sioux Falls?

A. That is correct.

Q. Do you have Plaintiff's Exhibit 52 before you?

A. Yes.

Q. You spoke about some work orders, 404, 397, 420. 397 is Plaintiff's Exhibit 55-6; 404 is Defendant's Exhibit 55-19; 420 is Defendant's Exhibit 55-20. Do you have those before you? A. Yes.

Q. Did you make a trip into South Dakota for the purpose of making an examination of the interconnection facilities referred to in the complaint in this matter?

A. I did.

Q. When did you make that trip?

A. I think about the middle of November, 1946.

Q. Will you give us a statement of what you inspected at that time and what you found?

A. My notes show this. Dated November 12, 1946. I started at Aberdeen and drove north along the transmission lines to Barnard. Then drove back to Aberdeen. The afternoon, my notes show, I drove west along the Aberdeen Ipswich line. The road was not in good condition but we went along a great part of it by car and we ran into a crossing at Lake Mina, and dropped a mile south and then followed it after the high line drops a mile south. That night we drove down to Huron. My recollection is the next day we went in Northwestern Public Service Co. office in Huron. We spent the day there, and left there on the morning of the 14th and went out to Miller and Highmore, and drove along the line going west from Highmore to a point where it turns north, about a mile or two east of Blunt. Drove from that point north to Gettysburg, following the transmission line. We were able to inspect the substation facilities at Barnard, Ipswich and at Gettysburg, but I was refused admission by the officials of Northwestern Public Service Co. at Aberdeen, so I don't know anything about that.

Q. Have you testified about wire size on the line from Aberdeen to Barnard and Barnard to Ipswich?

A. I think I said I got that information off the work orders. It is shown on the map.

Q. You said you have heard Mr. Elvig's testimony?

A. Yes.

Q. And you have examined, to the best of your recollection all of the exhibits that went in during his testimony?

A. That is correct.

Q. You testified the other day, I think, that you had been in the business of consulting engineer in some utilities, [minicipal] and private? A. That is correct.

Q. And you gave your technical training and background? A. That is correct.

Q. Have you an opinion as to how much power from Northwestern Public Service Company which was delivered onto the lines out of Aberdeen, went into North Dakota, from 1936, January 1, on to October 19, 1945?

A. I have.

Q. Will you state the characteristics of the line from Aberdeen to Barnard and Barnard to Ipswich, and the

other characteristics of that transmission line, and any other of its adjuncts such as transformers and meters, or absence of meters, which entered into the making of your opinion?

A. There is transformer capacity at Aberdeen, 5000, 33,000, stepped up to 38,000. From the high side of that transformer, OO ACSR line, 22,000 volts in 1937, now 38,000, goes west to Ipswich, a distance of about 26.6 miles. From Aberdeen north to Barnard, a distance of about 20 miles, there is now 38 KV line, throughout aluminum. These two lines come together at Aberdeen on what is called a bus tie. There is one integrating meter on the connection between the bus tie and the house bus of the Northwestern Public Service Co. The current transformers for the integrating meters are on the 33 KV side. In other words, they are on the supply side so that the current metered by this 1-R meter is fed out of it either north or west, so it is impossible for anyone to see from that meter whether the current going out of that power plant went north to Barnard or west to Ipswich. However, according to the information in those Aberdeen logs there was instantaneous—I think—my memory may be a little bit off, but it can be easily determined—I think about forty some indicating meters were put in that gave the instantaneous output on the high lines out of Aberdeen, and among those high lines being the line to Ipswich and the line to Barnard.

Q. From those characteristics along with the other information you have here—

A. Mr. Royhl objects. I am going to give my opinion from what I found from those meters.

Q. We ask for the witness' opinion now.

A. I am now referring to Plaintiff's Exhibit 55-8, which covers readings from January 4, 1943, through on various dates too numerous to enumerate, through a lot of dates in 1943 and 1944 as representing conditions that existed as regards transmission of power north from the Aberdeen plant of the Northwestern Public Service Co. I note day after day, on the dates given and hours given in this exhibit, that 300, 400, 500, 600, 700, 800, etc. kilowatt are indicated as going out on what is called the north line, be-

tween Aberdeen and the North Dakota state line, some loads to Northwestern Public Service Co., some loads to North Dakota Power & Light Co. Westport, Columbia, Barnard. And the Northern Power & Light out west to Wetonka and Leola. I observe the check back from the load diagrams given in Plaintiff's Exhibit 53. That, for the peak days, which are shown for the various years on these load diagrams, the peak load at the time of the peak hour, between Aberdeen and the state line, and I read you specifically from the ones for summer peak, August 21, 1937, as indicated in green, and I wish Mr. Stokke would check me on this if I misinterpret his explanation of what these mean. 100 that I take, goes to Barnard. 100 for Barnard, Westport, Columbia, etc. 100 going west to Leola and Wetonka, that is north. We will take another one at random here. Here is December 20, 1938. On some of the same lines I just read were, in this case, 320 kilowatts. Let's look for the one 1943 and 1944, which covers the period the excerpts from those logs are taken from. Here is one for December 22, 1943, shows a total of 300 kilowatt maximum demand, peak day, 1943, on the north line between Aberdeen and state line. 1944, peak hour, peak day, December 21, 1944, shows a total of 310 kilowatt. Alright. On the basis of this information, apparently the maximum or peak load that exists north between Aberdeen and Dakota state line is 300 kilowatts. There are numerous records here day after day in excess of 300 kilowatts, on the north high line. So the only conclusion I can come to is the excess goes out of the state into North Dakota.

Q. You were asked for per centage of the power.

A. I also believe that part of the power goes west out of Aberdeen, goes out to Bowdle and goes north out of Bowdle and goes up into North Dakota. I have looked through numerous of the log sheets, I don't remember the days to conform, and I checked these take-offs in 55-8, and I checked a lot of other days. It is my conclusion that approximately 25% of the power that leaves Northwestern Public Service Co. plant at Aberdeen goes up into North Dakota.

Q. You mean going on the north line?

A. Either way. The majority I would say went north,

but some of it going west eventually turns north at Bowdle and goes into North Dakota.

Q. You mean whatever is metered out on the interconnecting facilities, 25% goes into North Dakota?

A. Check.

Q. I think you have described some of the characteristics of North Dakota Power & Light Co. and Northern Power & Light Co. and later Dakota Public Service Co., as you knew from your examination in 1926 of the Northern Power & Light Co. Is that correct?

A. I know the lines as they were.

Q. You made an examination of the Wiley appraisal and inventory of both Northern Power & Light Co. and North Dakota Power & Light Co? A. That is correct.

Q. You are familiar with the transmission characteristics of the lines of North Dakota Power & Light Co. and Northern Power & Light Co., which transmitted energy from January 1, 1936, September 1, 1935, I should say, to October 19, 1945, to the Northwestern Public Service Co.?

A. I have the information on those transmission lines.

Q. Do you have an opinion as to the line loss of energy transmitted from Northern Power & Light Co. and North Dakota Power & Light Co., later the Dakota Public Service Co., to the Northwestern Public Service Co. during the period I have described, namely, September 1, 1935 to October 19, 1945? A. I do.

Q. Will you state what the line losses were, in your opinion, of the power thus transmitted?

A. My opinion is that the number of kilowatt hours lost in the transmission of power from the Dakota companies to Northwestern Public Service Co., which includes the loss, not only of the power transmitted to Northwestern Public Service Co., but the additional loss of the transmission of its own power for its own load, which said additional loss is incurred by the fact that it is already transmitting power for Northwestern Public Service Co., is that, in the earlier days that was probably conservatively 20%. I think in the later days, when the transmission of power increased very materially in quantity, it was 30% to 35%.

Q. Will you state when, in your opinion, in increased over 20%? A. Between 1940 and 1941.

Q. Between January 1, 1940 and January 1, 1941?

A. Specifically as to time when the new turbine at Bismarck went into operation. I will read you the statistics. The companies' sales in 1939, Dakota companies to Northwestern Public Service Co.—I am reading from the map which may be off a little bit—6,600,000. 1940, 7,000,000. 1941, it jumped up to about 11,200,000. 1942 it jumped up to about 12,000,000. During the intervening period for 1940 and 1941, Northern Power & Light Co. increased its transmission facilities from Bowdle to Ipswich, and Bowdle to Selby. Increased the voltage and applied the copper, which tended somewhat to increase the additional loss incurred in practically doubling transmission of power. So everything considered, that period of time between 1940 and 1941 when the transmission about doubled, in my opinion, the per centage went up to 30% to 35%.

Q. I observe in Exhibit 52, Page 6, Sargent & Lundy report, the following paragraph: The operating costs of [Buelah] and Bismarck steam station are much lower than the operating cost of installations on Northwestern Public Service Co. because of difference in fuel costs, and it therefore is uneconomical to transmit any appreciable amount of power from the south to your company. Also the transmission lines are very long and the loss would be prohibitive.—And on Page 9: To summarize this situation it will not pay to bring up the capacity of the [Buelah] plant because this added capacity cannot be made available in that long distance without excessive transmission losses.—In your opinion does it make any difference whether power is going from Aberdeen to the Dakota companies or from the Dakota companies to Aberdeen, as far as the amount of line losses is concerned on the property of power transmitted? A. No difference.

Q. Did you give any consideration to transformer losses on the interconnection facilities from Aberdeen to Barnard? A. Yes.

Q. Will you state whether or not when power goes through a transformer, or when electrical energy goes through a transformer, there is a loss? A. There is.

Q. You could lose it after it has gone through. Is that right? A. That is correct.

Q. You are familiar with the metering at the time you made the inspection trip of the lines from Aberdeen to Barnard?

A. The metering at Aberdeen, all I know is what Mr. Sickel told me. I could not get in and observe that. The metering at Barnard, for example, I saw the meter house and the rest of it. I saw that myself.

Q. What did Sickel tell you about the metering at Aberdeen?

A. Mr. Sickel told me and I have the map here to show where he marked where the CP's were, that the metering out of Aberdeen was done on the 33KV side of the transformer, and therefore the transformer losses in stepping up to 38 was not indicated in any meter reading.

Q. What about the power then metered out at Barnard to Northwestern Public Service Co?

A. The power goes north to Barnard and there is dropped 6900 volts. It is dropped through the transformer there, and then re-metered. That means that power used by Northwestern Public Service Co. in its towns of Barnard, Westport and Columbia is metered to Northern Power & Light on the low side of the transformers at Aberdeen. The transformer loss is then taken going up to 38,000. It goes up to Barnard, approximately 20 miles, and stepped down again. Another transmission loss. Metered again. All they get is what is on the low side of the Barnard transformer. So there is transformer losses. Two sets of transformers, 20 miles of line, no compensation for it.

Q. Do you have an opinion as to what per centage of power transmitted over the line you have just described is lost due to going through the transformers? A. I do.

Q. What per cent?

A. I would think the double transformer loss and loss on the 20 miles of line, for the average load, might be 2½% to 3%.

Q. There was another service supplied by Northwestern Public Service Co. off of the Aberdeen Barnard line also, where it took current that had been previously measured to the northern company? A. That is correct.

Q. What is that?

A. The Aberdeen pumping works. I think designated as Ordway.

Q. There is a step down meter there?

A. Step down transformer and it is metered on the low side.

Q. Which would mean a loss to Northern Power & Light Co? A. That is right.

Q. I call your attention to Plaintiff's Exhibit 22, and the supplement thereto, and call your attention to the time contemplated by the supplement for the amortization by payments from Dakota Public Service Co. and its predecessors of one half of the interconnection facilities.

A. I see it. You mean payment of $1666.66 per month?

Q. Yes? A. I see it.

Q. Are you familiar with the ordinary life of the kind of electric properties that made up the interconnection facilities involved in this contract that you have in your hand? A. Yes.

Q. Are you familiar with the ordinary—Do you know whether or not there is an ordinary, general, engineering conception as to what is an appropriate degree of, or per centage of, depreciation on such property?

A. Well, there is always some argument about the depreciation with the Internal Revenue Department.

Q. Do you have an opinion what the depreciation should be on those facilities? A. Yes.

Q. What rate annually? A. 30 years.

Q. That would be what annual rate? A. 3⅓%.

Q. I would like to call your attention to Article 4, Section 3, of Exhibit C to plaintiff's complaint. The Article is entitled IV-Transmission Lines. Section III says: It is further recognized that if one company has provided capacity between existing points of interchange which is in excess of its own reserve requirements and such excess may be used for the interchange of reserve capacity between the other companies, it shall be entitled to and receive compensation for the use of its transmission facilities from the other companies employing such excess, either for the actual transmission of power or for standby protection as determined and agreed upon

by the operating committee. Section IV says: In determining compensation for excess transmission line capacity, such excess as may exist in terminal facilities, such as transformers, switches and meters, may be included.—I will ask you whether, in your opinion, the transmission lines of the Northern Power & Light Co. were sufficient for all of its service in 1926, when you made your examination of that property? A. They would.

Q. From the testimony and exhibits in this case you are familiar with the fact that in 1936 the size of the line from Bowdle to Wishek was changed from 22,000 volts to 38,000 volts, are you? A. I am.

Q. You are familiar with the other changes that have been testified to and disclosed in the exhibits in this case as to the change in transmission facilities in the lines of what was originally the northern companies from 22,000 to 38,000, aren't you? A. I am.

Q. You are familiar with the evidence that has been introduced as to the demands on the lines of the Northern Power & Light Co., North Dakota Power & Light Co., and Dakota Public Service Co., as shown by the various exhibits in evidence in this case? A. That is right.

Q. Have you an opinion as to whether the 22,000 volts line would have been sufficient for all demands during all of the periods covered by the testimony in this case? I intended to call your attention to the fact when these companies were merged, July 1, 1939, one of the exhibits to the complaint, which is in their interchange capacity contract, was offered, which contains the identical language, and also that when the 1941 contract was executed by the common officers they dropped that out.

Mr. Woods: May we have the further objection that the question assumes 22,000 volts lines were adequate without any showing that there were such at all times involved in the period covered by the question.

Mr. Benson: The testimony shows that originally those lines were 22,000 volt lines and there is no evidence that they were changed until defendant increased them to 38,000 volts.

The Court: Objection overruled.

A. I will answer yes.

Q. I had in mind the testimony of Mr. Strike that he shipped energy by those lines to Steele, North Dakota, before and after 1936?

A. I have either read or heard that.

Q. Have you seen the exhibits to these inter capacity contracts which are in evidence? A. Yes.

Q. I think you know the numbers, don't you? A. Yes.

Q. And they show the generating capacities of Northern Power & Light Co. and North Dakota Power & Light Co. as of January 1, 1938? A. That is correct.

Q. So you know that? A. Yes.

Q. You have examined those? A. Yes.

Q. Have you seen Plaintiff's Exhibit 32, the letter from Mr. Sandstedt to the Federal Power Commission, dated February 24, 1942? A. Yes, I have it here.

Q. I call your attention to the fact that in the exhibits which have been introduced in evidence which are contracts between the parties, the last contract being the contract of July 1, 1941, which is Exhibit 22, the interval for determining demand first appears as one hour, whereas in all of the other exhibits it is one half hour, and I call your attention to the statement of Mr. Sandstedt in Exhibit 32, the letter of February 24, 1942,—We are not equipped to determine the 30 minute instantaneous maximum demand for the interconnected systems of Northwestern Public Service Co. and Dakota Public Service Co., and this is one of the considerations that prompted changing to sixty minute period for the purpose of this rate schedule. In attempting to determine the 30 minute demand it was necessary to locate employees at each point of generation and interchange to take readings. It was not practical to have employees engaged in this work during the entire month at the maximum demand was likely to occur, and we therefore tried to anticipate the day and the hour from previous experience. On the above basis were taken 30 minute demand on December 22, 1941.—I call your attention to the exhibit which is in evidence, which is Plaintiff's Exhibit 55-4, and to Page 55-4-C, and the statement on the

three pages, particularly 55-4-B, to the effect that the demand was taken or determined December 22, 1941, on the half hour basis, which exhibits show that the charge against Dakota Public Service Co. would have been $9,438.00 on that basis. Then I call your attention to the demand exhibit which was attached and sent in to the Federal Power Commission on the one hour basis.

Q. I will ask you, Mr. Helmick, whether in your opinion there being no metering facilities as described by Mr. Sandstedt in Exhibit 32, there was any accurate method of determining the actual day and hour of the demand, under the contracts where they had half hour demand?

A. No.

Q. Mr. Helmick, in addition to the exhibits which were taken out last Friday and placed in front of you for handy reference, I show you today Defendant's Exhibit 221, being the work order on the 22,000 volt line from Ellendale to Wishek. You have that before you now, do you? A. Yes.

Q. Do you have the Lucas & Luick report before you, which is an exhibit in this case, Plaintiff's Exhibit 82-14?

A. Yes.

Q. You have examined that document along with the other evidence in this case? A. Yes.

Q. Did you make an examination of the files contained in the mass Exhibit 82, to ascertain whether there was any work order at any time outstanding for a line from Wetonka to Ipswich? A. I did.

Q. Did you find such an order? A. I did.

Plaintiff's Exhibit 82-41 was received in evidence. It is a work order estimate of Northern Power and Light Company, dated June 6, 1929, relating to construction of a transmission line from Ipswich, S. D., to Wetonka, S. D., a distance of 26 miles, said line to be constructed for 35 K. V.

Q. I show you Plaintiff's Exhibit 82-41, and ask you whether or not that is the work order you have just referred to? A. Yes.

Q. The line contemplated by Plaintiff's Exhibit 82-14 which exhibit has gone into evidence, was not built?

A. That is correct. It was not built.

Q. If the line had been built from Wetonka to Leola to Ipswich, would that line have completed a loop on the property of Northern Power & Light Co.? A. Yes.

Q. Now, will you refer to your copy of the map of this property, I think it is Plaintiff's Exhibit 15, and will you just describe where that loop would have been? Show it on the map.

A. I think the work order itself covers it pretty well. Construction of 3 phase, 3 wire, transmission line from Ipswich, South Dakota to Wetonka, South Dakota, a distance of 26 miles. Both towns are shown on the map.

Q. What you mean to say, the map shows that if that phase was built in, it is apparent from the face of the map there would have been a complete loop?

A. That is correct.

Q. Now, you have testified as to your concern and what you have to do with operating facilities. If you will tell us if there is an operating value to such a loop, what that operating value is?

A. With the completion of the link between Ipswich and Wetonka, and Ipswich and Leola, there would have been a complete loop on the southeast end of the Northern Power & Light Co. In other words, considering Wishek, at which point power from North Dakota Power & Light Co., and from Bismarck and [Buelah], the line would have gone east and southeast to Ellendale; south from Ellendale to Barnard; across to Leola and Wetonka, down to Ipswich and west from Ipswich to Bowdle, at which point power was available from Mobridge, [Buelah] and other plants on the North Dakota Power & Light system, which would have meant a like outage and one portion of the loop would have kept service in two stems which would have been cut in half.

Q. If the loop which you have just referred to, and referred to in Plaintiff's Exhibit 82-41, high line referred to, had been completed, and having in mind the generating capacity then on the North Dakota Power & Light Co. property, and Northern Power & Light Co. property, do

you have an opinion as to what output and capacity in kilowatts of generation units would have been sufficient for reliable service to the Northern Power & Light Co. customers, beginning January 1, 1938? A. I do.

Q. Will you give us your opinion?

A. It is my opinion as of that date and based on the load diagrams admitted in Plaintiff's Exhibit 38—

Q. Are you predicating the answer on all of the testimony you have heard and all of the exhibits you have examined in this case? A. I am.

Q. Now, go ahead.

A. The load diagram as shown in 53 and Plaintiff's Exhibit 55-4—I am not going to take the time to go into them in detail, because they are a matter of record—on he basis of taking care of the southeast end of this property, and on the basis of maximum loads during peak period as shown by the aforementioned exhibit, it is my opinion that a thousand kilowatt Diesel engine installed, 750, at Ellendale, and 250 at Gettysburg, would have given reliable service on the properties in the southeast corner of the system, which were the ones that were dependent on power being available in that territory in case the transmission lines from [Buelah] and Bismarck into Wishek were down or the line from Mobridge into Bowdle was down.

Q. Are you familiar with the cost of construction of high lines and generating utilities in 1937, and subsequent years, to and including 1941? A. Yes.

Q. Will you tell us what would have been the cost of a 22,000 volt line from Wetonka to Leola and Ipswich in 1937?

A. My estimate shows for 23 miles, 22KV line, Leola to Ipswich, $52,900.00.

Q. In your opinion is that the amount that would have had to be spent in 1937 to build that line?

A. I think that amount would have built it.

Q. Can you tell us what, in your opinion, it would have cost to have installed 250 KW Diesel units at Gettysburg, and 750 KW Diesel generating unit at Ellendale?

A. My estimate of the cost of installation of 250 KW Diesel engine at Gettysburg, and 750 kilowatt unit at Ellendale, $125,000.00.

Q. That, in your opinion, is what they could have been installed for? A. Yes.

Q. The evidence in this case shows that a so-called interchange capacity contract was made between North Dakota Power & Light Co., Northern Power & Light Co. and Northwestern Public Service Co., as of January 1, 1938. And that after the merger of North Dakota Power & Light Co. and Northern Power & Light Co., a so-called interchange capacity contract was executed between Northwestern Public Service Co. and Dakota Public Service Co., as of July 1, 1939. And that in 1941 another contract was made between Dakota Public Service Co. and Northwestern Public Service Co., having in this last contract provisions relative to interchange capacity and charges therefor. You are familiar with those contracts that have been discussed and received in this case? A. Yes.

Q. Have you an opinion as to whether or not those interchange contracts were of any value to the North Dakota Power & Light Co., Northern Power & Light Co., and Dakota Public Service Co., in the operation of their property, their electric utility property? I am speaking of the interchange capacity contracts? A. Yes.

Q. It is your opinion they were not of value?

A. The interchange capacity contracts were of no value.

Q. If the line had been built from Wetonka to Ipswich and Leola to Ipswich, and the generating capacity had been installed at Gettysburg and Ellendale to begin operations on January 1, 1938, would the Northern Power & Light Co. have needed any physical interconnection with Northwestern Power & Light Co. after that date? A. No.

Q. Now, Mr. Helmick, I would like to refer to the testimony that we were talking about Friday afternoon, when we were referring to Plaintiff's Exhibit 32. Exhibit 32 contained the letter of Mr. Sandstedt to Federal Power Commission, dated February 24, 1942, and on the first page made references which we discussed Friday concerning thirty minute interval and the sixty minute interval in determining maximum demand. You have studied that letter and you did make a study of that letter prior to coming out here to testify? A. Yes.

Q. And you have already testified to the testimony

which you have listened to and observed in this case. I will ask you whether you prepared a chart showing the relation of the demand on the system of the North Dakota properties, and Dakota Public Service Co. and its predecessors, to the Northwestern Public Service Co.? A. I did.

Plaintiff's Exhibit 94 was received in evidence and is as follows:

Plaintiff's Exhibit 94
(p. 891) is shown on Card 20.

Q. The chart to which you refer has been identified as Plaintiff's Exhibit 94. Is that correct? A. 94, yes.

Q. Now, will you state where, on Exhibit 94, without giving any figures, you have platted the relation of the demands of Northwestern Public Service Co. to the Dakota companies?

A. At the top of the sheet, and as labelled.

Q. In other words, there are two black lines just below the top, and one says "Public Service Co." and one of those lines bears the legend "Northwestern" and the other "Dakota Co.'s"? A. That is right.

Q. Will you state the source of material for those lines, beginning with the December 21, 1937, shown on the chart or graph and ending with the last date?

A. They are taken from Plaintiff's Exhibits 19, 21, 22, 32, and 55-4-A. What is the number of the exhibit I previously had? This letter to the Federal Power Commission?

Q. 32? A. Then I have given it.

Q. Do those two lines and their relation to each other, also show, and are they designed to show, the result of switching from half hour integrated demand to the hour integrated demand? A. They show that.

Q. Now, will you explain the other material on this graph, Plaintiff's Exhibit 94, and the source of it beginning with the line "Total output Dakota Co.'s", and going down the graph?

A. The data platted on this chart came from Plaintiff's Exhibit 82-10, and some of it from 87. I might state that these graphs cover a period 1929 through 1945. The top line, which is black, shows total output in kilowatt hours for the Dakota companies. I would like to say this as preamble, when I mention Dakota companies, there was Northern Power & Light Co. which eventually went into Dakota Public Service Co. There was Hughes Electric Co. from which came North Dakota Power & Light Co., which became Dakota Public Service Co. So I am including all of those companies, whatever their names were, when I call them Dakota companies, and I am calling Northwestern Public Service Co. just Northwestern line, trying to keep these names straight. So the top line shows the total output of the Dakota companies. The second line, colored green, shows the use, total use of the Dakota

companies. The difference between the two lines is the kilowatt hours that went to Northwestern. The next dotted line, marked in yellow is the kilowatt hour output from the [Buelah] station. The next dotted line, marked in blue, is the output from the Bismarck station. The total on the right is the total in all kilowatt hours on both stations. I should have repeated that, but that applies to all of these graphs. The next line, solid, colored red, shows the gross kilowatt hours the Dakota companies sold to Northwestern. The next solid black line, you can pick it up more readily on the right hand side, is the net kilowatt hours to the Northwestern. In other words, the difference between the last two lines represents the kilowatt hours sent by Northwestern o the Dakota companies, and the next to the bottom line, the dot-dash line, is the output of kilowatt hours from the Mobridge station.

Q. Have you stated the source of all of the material on all of the lines? I don't know whether you have stated all of that or not? When you start to take total outputs—

A. I think you will find according to the notes made on my chart, that they were taken from Plaintiff's Exhibit 82-10 and 87.

Q. Is the difference between the top solid black line, "Total output Dakota Co.'s", and the line just below it, colored green, "Total use Dakota Co.'s", is that the net interchange that the Dakota companies furnished to Northwestern?

A. Yes, I may have misspoken when I said it was gross. I can check very rapidly. It is net interchange. I was wrong when I said it was gross.

Q. Now, I wish you would refer to those two black lines at the top of the page, where you show the relation between the demand on the Northwestern Public Service Co. and the Dakota companies, shown in the supplements to the interchange capacity contracts, and explain the movements of those two curves?

A. The top curve is labelled "Maximum yearly demand, Northwestern". The lower graph is the annual maximum demand of the Dakota companies.

Q. Now, will you explain the movements and the curves

and the lines indicating demands to which I last called your attention, before the exhibit was offered in evidence?

A. The curves of both companies are of the same nature or incline for the period shown, except for one year. On December 22nd, in which the maximum demand was [deternined] on the half hour basis—

The Court: December 22nd of what year?

A. (Con't) Pardon me, 1941. That is where the jog is in there. That maximum demand for Northwestern was estimated for that thirty minute basis, by Mr. Stokke's committee, as being 17,217 kilowatts, and that is the top peak in the Dakota saw tooth in there. For the same date the maximum demand for Dakota companies, 12-903. And that is that top peak or saw tooth of the Dakota companies. Later on the demand was changed to the sixty minute calibration or determination.

Q. As of what date?

A. As of December 15, which ante-dated the previous determination of December 22nd. In other words, December 22nd was set up as the agreed upon. When the demand was adjusted to the sixty minute, the Northwestern demand dropped from 17,217 to 15,990, which is the bottom of the two. Dakota Public Service Co. stayed about the same by the switching of method of computation. In other words, December 22nd, thirty minute basis, their maximum demand, 12,903. Switching to sixty minutes, it was 12,850. It is quite apparent if you look at the graph, that that drop in Northwestern's maximum demand estimate is not of the same nature in the year preceding it or any other year following. I just can't explain it to my own satisfaction.

Q. You have examined the supplements to the interchange capacity contracts, as you have stated? A. I have.

Q. Do you know what firm power is? A. I think so.

Q. Generally stated in the industry? A. I think so.

Q. Do you know what surplus power is in the industry?

A. Yes.

Q. Do you have an opinion as to whether Northwestern Public Service Co. had any firm power in 1938 and through to October 19, 1945? A. Yes.

Mr. Royhl: We object to this as incompetent, irrelevant and immaterial; for the further reason there is no place

in this case, in the pleadings or otherwise, where any firm power was sold or intended to be sold, and the contracts which are the basis for this litigation specifically provide that no firm contract is intended or contemplated.

Mr. Benson: You admit you didn't intend in any of the interchange contracts to furnish firm power?

Mr. Royhl: The contracts provide specifically there is no firm power to be provided under those contracts.

Mr. Benson: I am asking about the interchange capacity contracts.

Mr. Royhl: That is right.

Mr. Benson: You admit—

Mr. Royhl: I admit nothing. The contract provides specifically there is no firm power included. They are to furnish power if and when they have it. It might not be wrong to mention now they have always furnished it.

Q. In view of the colloquy between counsel will you state to us what kind of power the Northwestern Public Service Co. did deliver on any of these deliveries under that interchange contract?

Mr. Royhl: We object as an attempt to change or vary the terms of a written instrument which are pleaded by the plaintiff in this action; no foundation; wholly calling for the legal opinion and conclusion of this witness.

The Court: I don't know what the provisions of the contract are in that regard. It is difficult to rule on that question. There seems to be a difference of opinion between counsel as to what the contract really provides.

Mr. Benson: The contracts do not—I did not know counsel was going to admit it—the contracts do not provide for firm power. So I am asking what kind of power was delivered.

Mr. Royhl: Same objection.

The Court: Overruled.

Q. What kind of power was furnished, in view of the record and statement of counsel, and your knowledge of the facts in this case? A. Surplus.

Q. Have you heard the testimony that was offered in this case as to how this charge of $13.20 per K.W. was determined? A. I did.

Q. Do you know whether or not that was the price of demand for firm power, current in the community in the territory served by these companies, during the years of these contracts? A. Yes.

Q. Will you state what?

A. At that period of time 13.20 was a rather commonly used figure for firm power. There were variation. I know of figures that were lower, but it was one of the generally accepted figures.

Q. Do you have any opinion as to whether or not the value of surplus power, which you say was furnished, was anything more than the common charges for energy?

A. That is all it was, was surplus power, and that is all the value it had.

Q. As a man in your field, and in your experience, are the interconnection contracts in evidence here, and the interchange contracts, in your opinion, anything more than charges for energy?

Mr. Royhl: Same objection; attempting to change or vary the terms of a written contract.

The Court: Overruled.

A. That is all they are.

Q. You are familiar with Plaintiff's Exhibit 68. I show you Plaintiff's Exhibit 68. You are familiar with the language in the paragraph of Mr. Strike's statement about minimum or power or energy?

A. I [belive] so. The second paragraph below the tabulation of kilowatt hours, starting "Combined companies".

Q. Did you watch the curve of demand and growth of business of the Dakota companies, as shown in the exhibits in this case? A. I have.

Q. In your opinion would it have been necessary to have installed additional kilowatts in the southeast corner of this property in 1941? A. It would have been.

Q. Where would it have been installed and in what amount and at what costs?

A. It should have been installed at Ellendale, based on the load curve, and the figures obtain on the yearly load diagram. It should have been a unit of about 500 kilowatts, and the unit, with additional substations, etc. would have cost around $70,000.00.

Mr. Royhl: That is the substation?

A. (Con't) The complete installation. Principally a 500 kilowatt Diesel engine.

Q. You heretofore testified the 22,000 volt line was sufficient for the year on the property of the Northern Power & Light Co.? A. I believe I so testified.

Q. In the operation of this business of the Northern Power & Light Co. and the Dakota Public Service Co. and its successors, I presume you have an opinion as to whether the operation of that business, it was necessary to install the voltage, substation, or changing of the voltage from Bowdle to Selby, and building a line from Bowdle to Ipswich. I mean changing of the voltage of the line from Bowdle to Ipswich? A. I have an opinion.

Q. What is that opinion?

Mr. Royhl: Same objection last made in full to this line of testimony; incompetent, irrelevant and immaterial; speculative; calling for the opinion and conclusion of the witness; conjecture; not predicated on any alleged fraud of the interlocking officers as individuals.

The Court: Objection overruled.

A. It was not necessary to increase the capacity at that time at the extreme end of the Northern Power & Light Co., as was done. The 22,000 KV line in that location in the system, with the load that existed there, I speak of Northern Power & Light, was adequate.

Q. And would have been adequate right up to October 19, 1945?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. I think so.

Q. I would like to have you look at Plaintiff's Exhibit 69, a report of Mr. Gazin. You have seen that exhibit? A. I have a copy in my hands.

Q. You have a photographic copy of it before you?

A. That is correct.

Q. Now, will you call attention to the place in that exhibit where there is a statement made that "North Dakota Power & Light Co. will make a net gain of $2700.00 by selling current to Northern Power & Light Co. at 3½ mills."

A. That statement in the exhibit, the net gain to North

Dakota Power & Light Co., the lower center of the page, $2700.00 per year.

Q. Are there any errors in computation or errors in assumption, in this Exhibit 69?

Mr. Royhl: We object to this as calling for the opinion and conclusion of the witness, the exhibit being the best evidence of any errors or mistakes contained therein; wholly speculative; not predicated upon any allegations or matters and things contained in the charges made by the plaintiff in this action.

Mr. Benson: I should have said errors in facts.

The Court: This exhibit is one of the records of the defendant company?

Mr. Benson: It was produced in the examination of Mr. White in Chicago, as Mr. Gazin's report, and Gazin was an officer of the defendant company.

The Court: Objection overruled.

Mr. Royhl: May I add no proper foundation laid; it not appearing that this witness has any knowledge of any of the matters or facts or figures shown therein, which are predicated upon conditions in existence in 1932 and prior thereto.

The Court: He says he has examined this exhibit. If his conclusions are based on insufficient knowledge it can be brought out on cross examination. Overruled.

A. There is a mathematical error in the original premise made on Page 3. By referring back to Page 2, and I quote from the exhibit, "The normal or net kilowatt hours as contemplated in this exhibit to be made at [Buelah] was 860 thousand net kilowatt hours. While, according to my computation, that is about 10 million kilowatt hours a year.

Q. Your computation is made from what?

A. Go back to Page 2. I will read the whole thing, if you want me to, to straighten the thing up. Starting in, Average monthly kilowatt sales, 950,000 KWH. Average per cent loss, system, light load, 18%. Required NKWH 1,160,000. Average monthly NKWH generated by standby and steam heat plant mainly Bismarck, 300,000. Leaving a difference of 860,000 NKWH. Then you drop down to the bottom of that, and by inference, or by direct subtraction, not inference, 860,000 NKWH per month is what it was contem-

plated should be or would be produced at [Buelah]. According to my mathematics, if you multiply 860,000 by 12, it gives around 10,300,000. Yet, you drop down to the last figure you will notice that a figure of 13,920,000 NKWH, which, in fact, is the total net requirement of all of the Dakota Public Service Co. is used as one of the multipliers of that.

Q. 13,920,000?

A. That is the total net requirement of the system, not of the [Buelah] plant that is under discussion here. The figure should have been 13,920,000, which should have been 10,300,000. Alright. So if you correct the mathematics and figure to save $16,704.00, even on the basis it is figured, becomes $12,400.00. If you go over to Page 3 and you use a figure of $12,400.00 instead of $16,700.00, you wind up with a net loss of $1600.00, instead of a profit of $2700.00. That is just a plain mathematical error.

Q. So, instead of being a gain of $2700.00, on his own figures there was a loss of $1600.00?

Mr. Royhl: Same objection.

The Court: Overruled.

A. That is right.

Q. You better explain how that loss occurred.

A. To repeat, the statement on the third page here, in the original is $16,700.00 savings, to North Dakota Power & Light. If the right figure is used there, namely, $12,400, there is a difference at this one particular place of $4300. So that you total $4300 less than shown. You come on down and go through with your additions and your assumptions that are in here, that figure instead of being $32,300, becomes $4300 less. So we wind up with $4300 difference, and subtracting $2700 from the $4300 gives you $1600. Does that straighten that out?

Q. The Lucas & Luick report, Exhibit 82-14, is in evidence and contains the plan for tying into the North Dakota Power & Light Co. and Northern Power & Light Co. You have heard the testimony as to the accomplishment of that fact? A. Yes.

Q. You have heard the testimony, didn't you, concerning the elimination of various plants on the property of the Northern Power & Light Co.? A. I have.

Q. And this morning there was considerable testimony

concerning this loop from Wetonka to Leola to Ipswich. Now, subsequent to the Lucas & Luick report, have you made an examination to ascertain whether there was an addition to the generating capacity at the [Buelah] plant?

A. I have.

Q. And that is based upon the records that are in evidence here?

A. I believe so. I don't remember the exhibit numbers. One that Mr. Elvig had.

Q. The record you are asking about is the record of the inventory and appraisal by the North Dakota Railroad Commission Exhibits 13 and 14?

A. Those are the Wiley reports and they show that the unit was in there of the size designed to go in in the Lucas & Luick report.

Q. And is the 5000 KVA substation shown also in?

A. In the Wiley inventory.

Q. Have you an opinion as to whether or not it would have been a practical operation to transport power from [Buelah] to Aberdeen and Gettysburg, in the amounts which the evidence shows were delivered to Northwestern Public Service Co., without having the Mobridge and Bismarck stations tied into the transportation lines between [Buelah] and Gettysburg and Aberdeen?

A. I have an opinion.

Q. Will you state your opinion?

A. By reference to Exhibit 15 and 13—

Q. Are you referring to the map? A. Yes.

Q. That is Exhibit 15?

A. Plaintiff's Exhibit 15. It will be noted that from [Buelah] to Aberdeen is approximately 292 wire miles. That is, via Mobridge. From [Buelah] to Bismarck to Ellendale to Aberdeen, 298 miles. That is a pretty long transmission line. With the voltage on it, namely, 38,000, some 22,000 KV stuff in there, the size of the wire, it poses, in my opinion, operating difficulty as to regulation, stability and other details, and it is my opinion without having Mobridge in there, approximately half way, or a little more than half way, on the way from [Buelah] to Aberdeen, and also Bismarck the other way in there to operate and maintain voltage and to help regulation and stability, that it would have been quite an operating

headache to try to transmit reliably the amount of Power that were transmitted from the Dakota system to Aberdeen and Ipswich.

Q. Do you mean it would not have been a practical business operation?

A. I think it would have been far from a practical operating transmission system.

Q. Now, will you refer to this chart which has been marked Plaintiff's Exhibit 94. I don't want you to go to all of the exhibits that effect the figures showing the proportion of the total operation of the North Dakota companies, total generation of the North Dakota companies, which went to Northwestern Public Service Co. being in evidence—I believe you stated that this Exhibit 94 is an accurate graph of the relation of these various items to each other, which you discussed? A. I did.

Q. Can you indicate in proportion to how much of the total generation of the Dakota companies during the life of this graph, went to Northwestern Public Service Co.?

A. I think that can be best answered this way. Let's take 1936. The Dakota system output was 39,400,000, and the net kilowatt hours to Dakota companies was about one and a half to two. You divide that by your 39.3 shows about 4%.

Q. Went to Northwestern Public Service Co.?

A. That is to Northwestern, yes. Out of the total generation. You can go up to 1940 and get another figure. You had about 52 million generation, and about 5 million to Northwestern, out of a total production of 52 million, makes a little under 10%. You take another one in between here. Take 1942. You get 63 million production, less net interchange of around 11 million, about 17%. Take the last one, 1945. You have about 69 million.

Q. I think we have the figures on one of the exhibits up to October 19th. Is that what it was?

A. That figure—I am quoting from Exhibit 82-10, there is a total given in here to October 19, 1945, 54,915,000. There is net to Northwestern Public Service Co., 7,582,000. That gives about 13.6%.

Q. The rest of the years can be figured out from the charts or exhibits in evidence?

A. That is right. It is all there.

Q. You have studied all of the evidence to get the relations between the total generation and the net generation of the Dakota companies, and the amount that was furnished to Northwestern Public Service Co., haven't you?

A. I have.

Q. Will you state whether or not, considering the relationship of the amount of power delivered to Northwestern Public Service Co., and the amount produced by the Dakota companies for their own use, furnishing power to Northwestern Public Service Co., reduced the cost per kilowatt hour of power to the Dakota companies during this sale period?

Mr. Royhl: Objected to as incompetent, irrelevant and immaterial; no proper foundation laid; the witness not shown himself qualified to testify; wholly speculative; not within the issues in this case.

The Court: Overruled.

A. It did not.

Q. I believe you have prepared graphs showing the relation in time of the increase in power, or an increase in power delivered to Northwestern Public Service Co., and the expenditures in Bismarck for boilers in 1938, and for 4000 KW turbine in 1940. Is that correct? A. I have.

Q. What exhibit is that, if it is an exhibit?

A. That is Plaintiff's Exhibit 94 previously discussed.

Q. Does that show the output from [Buelah]? A. Yes.

Q. Will you explain from the graph the relationship of the output at [Buelah] and Bismarck to the sales of energy to Northwestern Public Service Co.?

A. The third line from the top, dotted black line, here colored with yellow, is output from the [Buelah] station. You will note that about 1939 it persisted in its output and the top of the graph more or less paralleled the Dakota company's own use. From 1939 and 1940, its output was about the same. 1941 it dropped off about a million kilowatt hours in output. In 1942 it dropped off possible a couple of hundred thousand. In 1943 it went up. In 1944 it went down. Let's refer to the dotted line below marked in blue, which is the Bismarck station. You will notice in 1939 a production or output of something over nine million.

In 1940 a production of around eight and a half million. In 1941 a production of about eighteen million, seven hundred thousand. In 1942 an output of more than twenty-one million. Now, let's look at the gross kilowatt hours to Northwestern as shown by the heavy line in red at the bottom for the same years. In 1939, gross sales to Northwestern, 6,600,000. 1940, about 7,000,000. 1941 about 11,200,000. 1942, up to 12,000,000. The Bismarck turbine, 4000 kilowatt Bismarck turbine went on the line in September or October, 1940, with a resulting very material increase in its output, about 400% in its annual output. The gross to Northwestern increased about 80% to 90%. The output from the [Buelah] plant dropped off. Those facts simply means to me that that additional output that went to Northwestern Public Service Co. was made and produced at the Bismarck plant.

Q. You have heard the testimony in this case as to the prices that were paid for energy by Northwestern Public Service Co. during all of the period from 1936 on, January 1, 1936, on? A. Yes.

Q. And some evidence as to some prior prices. Have you an opinion as to the amount Northwestern Public Service Co. should have paid to the Dakota companies, per kilowatt hour for power delivered at Aberdeen and Gettysburg to avoid raising the Dakota companies' own costs per kilowatt hour?

Mr. Royhl: Objected to as incompetent, irrelevant and immaterial; no proper foundation laid; not within the issues in this case; the witness not shown himself qualified.

The Court: Objection overruled.

A. I have.

Q. Now, in order that it might be more expeditious for counsel to follow your testimony and to assist the Court, have you prepared computations and put them on an exhibit? A. I have had my notes copied.

Plaintiff's Exhibit 95 was marked for identification and is as follows:

P44 & 45
BC

9-1-35 - 7-1-39

AVERAGE PRODUCTION COST - BEULAH - BISMARCK & MOBRIDGE

1935	5.71	37,898,500	216
1936	6.17	38,113,708	235
1937	5.14	43,608,022	221
1938			
1939	4.77	48,068,059	227
	21.79/4 = 5.42	167,688,389	902
		902/168 =	5.37

WEIGHTED AVERAGED PRODUCTION

COST -1935 - 39 = 5.37 mills/K.W.H.

7-1-39 - 7-1-41

1939	4.77	48,068,059	227
1940	4.59	51,734,932	237
1941	4.51	60,730,088	274
	13.87/3 = 4.62	160,533,079	738
		738/160.5 =	4.60

7-1-41 - 10-19-45

1941	4.51	60,730,088	274
1942	4.81	62,833,729	303
1943	4.99	63,316,060	316
1944	5.28	64,808,068	342
1945	5.29	54,547,920	288
	24.88/5 = 4.97	306,235,865	1523/306 = 4.98

Filed Feb 23 1948
Roy D Marker
Clerk

Plaintiff's Exhibit 95.

TRANSMISSION LINE INCREASES Aug. 1, 1936

1935 - Wishek - Bowdle W. O. #366 rebuilt with 2/0 ASCR - from 3-#8/1 #

60 miles

Line	111,871
2 Automatic Switches	15,821
	127,692

DISTRIBUTION

Own Use - 20%	25,692
Joint Use - 80%	102,000

BOWDLE - SELBY - W. O. #655 - Dec. 1 -40

Changed from D to Y	1,900
20 Miles	

BOWDLE - IPSWICH W. O. #653 - Dec. 1 -40

New Line - 1 Mile North - 30 Miles

Changed 3 #8 to 2/0 ACSR	50,850
Distribution	
Own Use 20%	10,350
Joint Use - 80%	41,500

1900
50850
46 47
99 - 3

BOWDLE SUBSTATION Dec. 1-41

W. O. #692 Structure	5120.59	
W. O. #758 - OCB	17086.90	
W. O. #763 - 2000 KVA	7718.33	
W. O. #844 - OCB	16547.30	
	46,473.12	
Own Use 20%		9,473.12
Joint Use 80%		37,000.00

INCREASE VOLTAGE - BOWDLE TO GETTYSBURG * 22D - 33D

INCREASE VOLTAGE - ELLENDALE - FREDERICK - 22D - 38Y -

FIXED CHARGES

	Interest	6.00
	Depreciation 30 yrs.	3.33
	Taxes-Maintenance & Repairs	2.67
		12.00%

TRANSMISSION FACILITIES

As of

Aug.-1-36

Deprec. 1 mo.	Wishek-Bowdle	102000
102000 x 3.33 = 12	5/12 x 12 x 102000	6000
2.83	1 year - FC 12 x 102	12240

Jan-1-41

	Wishek-Bowdle	102000
	Selby-Bowdle	1900
	Bowdle-Ipswich	40500
Deprec. 1 mo =	144400 x 3.33 = 402 / 12	$144,400
	1 year F.C. 12 x 144,400	17,328

Jan. 1-42

	Wishek-Bowdle	102000
	Selby-Bowdle	1900
	Bowdle-Ipswich	40500
	Bowdle Substation	37000
Deprec. 1 mo =	181400 x 3.33 = 504 -	181400
	1 yr F.C. 12 x 181400	$21,768

POWER COSTS

7-1-35 - 7-1-39 4 Yrs.

K W H PRODUCTION NET

	BEULAH	BISMARCK	MOBRIDGE
6 mo -35	14 985 000	2100 000	1664 000
36	29 108 000	4332 000	4674 000
37	35 202 000	3768 000	4637 000
38	37 413 000	4500 000 est	4046 000
6 mo 39	19 861 000	2674 000	1499 000
Total 170663000	136 569 000	17374 000	16720 000
%	80%	10.2%	9.8%
Use	80%	10%	10%

AVERAGE PRODUCTION COST 5.37 Mills
Net KWH (2,850,000 1 yr) 12,550,381

F.C.

7-1-35 to 8-1-36	00.00
8-1-36 to 1-1-37	6000.00
1-1-37 to 1-1-38 = $12240 - \frac{65}{289}(.06)(\frac{1415}{4810} \times 283)$	12,175.00
1-1-38 to 1-1-39 = $12240 - .06 (17 \times 283)$	11,951.00
1-1-39 to 7-1-39 = $\frac{12240}{2} - .06 (\frac{390}{6500} \times \frac{283}{2})$	5,925.00
	36,0 51.00
SPLIT F.C.- 50/50	18025.
Cost per K.W.H = $\frac{18025}{12550381}$ =	1.44 Mills
PRODUCTION COST	5.37
LINE LOSS 20% = $\frac{5.37}{.80}$ = 5.37	1.34
Cost at Aberdeen	8.15 Mills

POWER COSTS

7-1-39 to 7-1-41 2 yrs.

	Beulah	Bismarck	Mobridge
6 mo. 39	19,861,000	2,674,00 0	1,499,000
40	39,711,000	8,676,000	3,348,000
6 mo. 41	19.285.000	9,377,000	1.704.000
Total 106,135,000	78,857,000	20,727,000	6,551,000
%	74.2	19.6	6.2
Use	74%	20%	6%

Average Production Cost 4.60 mills

Net KWH (8935000 4 yr) 11,869,145

F.C.

7-1-39 - 1-1-40 = $\frac{12240}{2} - .06 (\frac{498}{695} \times \frac{8300}{11600} \times 283)$	5871
1-1-40- 1-1-41 = $12240 - .06 (41 \times 283)$	11545
1-1-41- 7-1-41 = $\frac{17328}{2} -$	8244
$\frac{.06 (\frac{797}{1330} \times 47 \times 283)}{2} - \frac{.06 (\frac{43}{719} \times 6 \times [\frac{402}{439} - 283])}{2}$	25660
Split F.C. 50/50	12830
F.C. Cost per KWH $\frac{12830}{11869145}$ =	1.07
Production Cost	4.60
Line loss 30% = $\frac{5.67}{.70}$ + 4.60	1.99
Cost @ Aberdeen	7.66 mills

Plaintiff's Exhibit 95 (pages 915 and 917) shown on Card 20

Q. I show you a document which has been marked Plaintiff's Exhibit 95, and ask you if that is the exhibit which you say you prepared to show your computation?

A. It is a copy of my computations from my notes.

Q. Just before adjournment we were referring to figures in a document marked Exhibit 95. Will you refer to the first page of that document, and explain what the first subject is under the average production cost, and the source of that information?

A. The figures of average production cost, [Buelah], Bismarck and Mobridge, kilowatt hours, etc., come from Plaintiff's Exhibit 82-13. The kilowatt hours—I believe I misspoke myself,—I believe came from the complaint itself. In other words, Exhibit 82-13 does not break down the kilowatt hours for fractional years, so I got the kilowatt hours for these various periods from that record. Both the net kilowatt hours generated and average cost per kilowatt hours in millions, comes from Plaintiff's Exhibit 82-13.

Q. Now, without stating figures, you have placed next on the first page, average production cost for all of these stations, including Bismarck and Mobridge? A. Yes.

Q. And the average production cost per kilowatt hour?

A. Maybe I better explain the fourth column in there.

Q. That is a computation. What are the sources of the other figures? Will you refer to the figures following the dates, 7-1-39 and 7-1-41. Where did you get the average production cost for that period? Was that on 82-13?

A. That is right.

Q. Where did you get the kilowatt hours produced for those years?

A. That is also from 82-13. The year after 1941 is split for or into six months period. So I used three years, 1939, 1940 and 1941 as indicating the average because the figures in 82-13 were not split technically on the date shown.

Q. And the figures or the date, July 1, 1941 to October 19, 1945, they were secured from 82-13, and another exhibit, 82-10, were they?

A. I don't know whether on 82-13. I would have to look at the original. My copy has 55-44 on it.

Q. Did you get all of those figures from 82-13? A. Yes.

Q. Referring to the second page of Exhibit 95. You were here when Mr. Elvig testified as to the cost of the Wetonka Bowdle line, and the two automatic switches installed on that line? A. I was.

Q. And those were the figures you put in on the top of the second page of Exhibit 95? A. That is right.

Q. Now, below the word "Distribution" on the second page, you have a phrase and a per centage, 20%?

A. That is right.

Q. You didn't take that out of any exhibit?

A. That is right.

Q. And that phrase that you inserted in there is "Own Use"? A. Yes.

Q. Will you explain, without using the dollars opposite that, the meaning of that phraseology or per centage?

A. It is my opinion that if this line had not been built that over the ensuing period of years something would have had to be done to the line that was already in there and in use, so that in allocating this cost, I figured future maintenance and repairs, etc. was reduced by the figure given.

Q. That is from your experience? A. That is my opinion.

Q. Then that next figure, that is merely the difference you have produced between the amount with the 20% and the testimony of Mr. Elvig as to cost?

A. That is right.

Q. Now, you use the term "Joint Use". What do you mean by that?

A. I mean by this joint use as transmission line for transmitting power to Northwestern and from Northwestern.

Q. You had in mind at that time, the time you prepared this exhibit, and now have in mind, the opinion I think you made, that the original line was sufficient for the business of the Northern Power & Light Co.? A. Yes.

Q. You had in mind also the sections of the interchange capacity contract with reference to excess transmission facilities that you heard read here in court? A. Yes.

Q. Now, the next item on that page entitled "Bowdle Selby" you have put in there the entire amount of the testimony as to the cost of putting the messenger wire on and changing the voltage from Bowdle to Selby?

A. That is correct.

Q. You have left off a few dollars and used round figures? A. Round figures in all cases, yes.

Q. The next item which is mileage is from the testimony in the case?

A. That is from the map, Plaintiff's Exhibit 15.

Q. Now, the next item entitled "Bowdle to Ipswich, Work Order 653" that is the cost of the change of the line from Bowdle to Ipswich from 22,000 to 38,000 KV. Is that correct? Or the change from copper to 00 aluminum?

A. Both.

Q. Then you use under that set of figures the phrase "Own use" 20%. A. That is right.

Q. And you arrive at that the same way as you did the "Own use" 20% on the Bowdle Wetonka line?

A. That is correct.

Q. So from there on the figures are computations?

A. That is right.

Q. Under the heading "Bowdle substation" you have used the figures that are in evidence here as to the expenditures for the Bowdle substation, under work orders indicated on these pages? A. That is right.

Q. And the phrase "Own use" means the same there as in the other two places where you have used it? A. Yes.

Q. And "Joint use" is the same meaning as in the other two places? A. Yes.

Q. And the figures are merely a matter of computation?

A. Correct.

Q. The next three items are entitled "Increased Voltage (1) Bowdle to Gettysburg, (2) Ellendale to Barnard.

A. That is right.

Q. You have put that in there to show what?

A. Complete the picture of what was done.

Q. In the changing of the carrying capacity of the line?

A. That is right.

Q. You heard the testimony about that? A. That is right.

Q. On the third page you have the title "Fixed Charges". Have you made a study to determine what, in your opinion, the fixed charges would be on carrying this property, or were on carrying this property? A. Yes.

Q. And you figured that on an interest rate of how much? A. 6%.

Q. What life did you give to the property?

A. Thirty years.

Q. What would result in a straight line of depreciation of what rate, 3-1/3%? A. Yes.

Q. Did you use 3-1/3% in figuring fixed charges in carrying this? A. I did.

Q. You are familiar with the cost of maintenance and repairs on this class of property? A. Yes.

Q. You have examined the record and heard the testimony in this case? A. Yes.

Q. Did you compute an item for taxes and maintenance and repairs as a per centage on the cost of the property?

A. I did.

Q. In your opinion what would that per centage be?

A. 2.67%.

Q. And then on this third page you have just added these various items to the fixed charges?

A. That is correct.

Q. You get a total per centage for fixed charges in your own mind of what per centage? A. 12%.

Q. Now, will you explain the base and source of the figures until the title "Transmission Facilities" on Page 3?

A. The value—it is pretty hard to explain this—that transmission line from Wishek to Bowdle, according to the record, went into service about the 1st of August, 1937. Then the next figure is the figure previously seen indicating value in the Wishek Bowdle line which, in my opinion, should be used on "Joint Use". The next figure is the 12% depreciation for five months on the previous figure. The next figure is one year's fixed charges at 12% on the first figure shown. We come on down through January 1, 1941. I put in a value of Wishek-Bowdle-Selby and Bowdle-Ipswich, on per centage, arrived at a figure and then I took the fixed charges on that at so much. I got on down through January 1, 1942. I add in the Bowdle substation. That gives you a total value of the joint use property as of January 1, 1942, and then there is an extended one year fixed charges at so many dollars there.

Q. Now, we go to the fourth page, under the title

"Power Cost July 1, 1935 to July 1, 1939." Will you explain where you got the figures under the word ["Buelah"] and what they represent?

A. Those represent the net kilowatt hours for the period shown produced by the three stations. Their source is 82-10, I believe.

Q. Anyhow it is from records and testimony in this case?

A. That is right.

Q. Where did you get the figures opposite the term "Average production cost"? A. That came from Page 1.

Q. Where did you get the figures 12,550,381, opposite the term "Net KWH"? Did you take that out of the complaint and the answer?

A. Yes. That is net kilowatt hours indicated between the two companies.

Q. Below the line drawn across the middle of the page there are figures "F. C." What does that indicate?

A. That was my shorthand abbreviation for fixed charges.

Q. And then you have stated those fixed charges in one instance from July 1 to August 1, 1936, you stated no figure for that date. Is that correct? A. That is right.

Q. And then you stated from August 1, 1936 to January 1, 1937, a figure which is a result of what?

A. I think you will find the figure if you go back to Page 3.

Q. And these computations of fixed charges are on all of the property that was in and involved in these items of property described in the exhibit and which was in use during the period indicated opposite each figure where the fixed charge figure is set out? A. They were.

Q. I notice below those computation you say "Split fixed charges 50/50". Will you explain why you have used that phraseology?

A. Simply a matter of property that was used for joint use and I just arbitrarily put it 50/50.

Q. Kilowatts were running both ways at various times?

A. That is right.

Q. Then the next computation on that page is a division of half of the fixed charges by the number of kilowatt hours. Is that correct? A. That is right.

Q. The next figure is where you say "Production costs". Does that mean average cost?

A. It is a figure from further up on the page, or you can refer back to Page 1 for it. That is the authority for it.

Q. The next figure is line loss. Did you arrive at an opinion as to line loss of energy flowing over the facilities described in this exhibit from the North Dakota companies to Northwestern Public Service Co.? A. I did.

Q. What, in your opinion, was that line loss?

A. I figured for this period of time that the average net claimed, 2,800,000, the line loss was about 20% on the transmission of this power plus the additional loss on the transmission of their own power.

Q. It was caused by the transmission of the power to Northwestern Public Service Co.? A. That is right.

Q. At the bottom of the page you have set forth the figure which is merely an addition of your fixed charge per kilowatt hour, your average production cost and your line loss? A. That is right.

Q. Will you check the rest of the pages and see whether there are any figures on those other pages that are not derived from figures to which you have heretofore testified?

A. There is one possible figure here, but I think I testified to it. That was my opinion as to the line loss on transmitting this amount of power. I have it in here at 30% and I think I testified previously.

Q. That is on Page 5?

A. That is right. Outside of that the figures are the records of the case, plus figures on previous sheets.

Q. Now, I observe that you say for the period on Page 5, which followed the previous period we discussed, the line loss was 30% instead of 20%? A. That is right.

Q. Why was it greater?

A. The line loss goes up, of course, as you increase the transmission and the amount of power. If you look on Page 4, the average for that period was 2,800,000, and increased use or average for this period was 5,900,000. At the same time it seemed to me that raising the line loss, doubling the transmission raised the line loss from 20%

to 30%, and it is backed up by other figures, and it certainly was a conservative way of doing it.

Q. Is that the explanation of the line loss on the 7th page of the exhibit?

A. That is right. For the period covered on the 7th page, the average net transfer was 10 million which contrasted with the about 6 million, and therefore, in my opinion the line loss went up in per centage to 35% or over.

Q. Perhaps you should explain a little more what is on Page 6 with reference to what is shown as the addition, if any, to these facilities that were increased to 38,000 volts?

A. On that page first is, I think, the depreciated property values of various items previously shown. The property value 7-1-41. Then the depreciated value of the Wishek Bowdle line would be 88,700—

Q. In other words, all you have done is drop from page to page as you have taken off depreciation which the record discloses? A. That is right.

Mr. Benson: We offer in evidence Plaintiff's Exhibit 95.

Mr. Royhl: To Exhibit 95 the defendant objects for the reason that it is incompetent, irrelevant and immaterial; wholly speculative; indefinite and uncertain; no proper foundation laid; incompetent for any purpose; not within the issues in this case; the witness not having shown himself qualified to submit proof as it is set forth in Exhibit 95.

The Court: Objection overruled.

Q. Now, will you refer, please, to Exhibit 95, the fourth page of the exhibit, and tell us what the fixed cost per kilowatt hour was for kilowatt hours delivered to Northwestern Public Service Co. at Aberdeen? I mean fixed charges, as you have explained the term "fixed charges"?

Mr. Royhl: We object to this as the figure or computation is set forth in Exhibit 95; is not the best evidence of what the exhibit contains. It is merely repetition by the witness of a written instrument now offered and received in evidence.

Q. Will you state in your opinion and according to the figures which are in evidence in this case? A. 1.44 mills.

Q. And that is from the period from September 1, 1935 to July 1, 1939, is it? A. I believe I have it from July 1.

Q. But you make no charges for fixed charges until August 1, 1936?

A. That is right, but my heading is on six months basis.

Q. And the average production cost of that power has already gone in at 5.37 mills?

Mr. Royhl: Same objection.

The Court: Overruled.

A. That is right.

Q. And the line loss on that power is how much in mills per kilowatt hour?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. 8.15 mills.

Q. Now, will you refer to the 5th page of Exhibit 95, which covers the period from July 1, 1939 to July 1, 1941. That is correct, is it? A. That is correct.

Q. What are the fixed charges per kilowatt hour of energy delivered to Aberdeen during that period, according to your opinion and the evidence in this case?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. 1.07 mills.

Q. What is the production cost which the evidence shows? The average production cost?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. 4.60 mills.

Q. What is the line loss, in your opinion, in mills?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. 1.99.

Q. So that the combination of those figures added together is the cost at Aberdeen of energy delivered to Northwestern Public Service Co. by the Dakota companies, during the period July 1, 1939 to July 1, 1941?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. I think that is not stated quite correctly to this extent, it is net kilowatt hours.

Q. Will you state what the combination of those figures represent? A. 7.66 mills.

Q. Will you state what that is?

A. Per net kilowatt hours delivered. The cost per net kilowatt hour delivered at Aberdeen.

Q. Now, will you refer to the period shown on the 7th page of Exhibit 95 and state what the figures totalling 8.61 at the bottom of that page are? What are those figures which total that?

A. The first item is .95 mills, fixed charges per net kilowatt hour delivered. The next figure, production cost, 4.98 per net kilowatt hour delivered. The next one 2.68, line loss. Giving a total of net kilowatt hour delivered, total 8.61 mills.

Q. This symbol a little ways up from the bottom of that page FC/KWH, that is your opinion as to what the evidence in this case shows as the fixed charges per kilowatt hour delivered during the period disclosed on that page? A. That is correct.

Q. So that the cost per net kilowatt hour delivered to Aberdeen from July 1, 1941 to October, 1945, by the Dakota Public Service Co. which energy was delivered to Northwestern Public Service Co., you said was 8.61 mills per kilowatt hour?

Mr. Royhl: Same objection.

The Court: Same ruling.

A. That is correct.

Q. Do you have a chart or graph showing the comparative costs of interchange energy to Northwestern Public Service Co. and to the North Dakota Power & Light Co. and Northern Power & Light Co. and Dakota Public Service Co., which we call the Dakota companies, during the period of these contracts which are in litigation here?

A. I do.

Plaintiff's Exhibit 96 was marked for identification and is as follows:

Plaintiff's Exhibit 96
Page 929) is shown on
Card 20

Blank Page

930

Q. Is that graph now marked Plaintiff's Exhibit 96?

A. That is right.

Q. Will you refer to Exhibit 96, and will you explain the blue line on that exhibit, and the figures and source of the figures that go into the blue line?

A. All of these lines cover the period from 1930 to 1945 and they show the cost per kilowatt hour in mills. The black line with the greenish blue line superimposed upon it, is the cost per kilowatt hour in mills of the power purchased by the Dakota companies from the Northwestern.

The Court: Cost to the Dakota companies?

The Witness: That is correct.

Q. That is the yellowish line?

A. No. The greenish blue line is the cost to Dakota companies of the power purchased by them from Northwestern.

Q. What is the next line down? Is that a yellowish line?

A. That is a solid black line that has been covered over by yellow and it doesn't show up [to] well, but it is the production cost of Dakota companies. That is from the records of average production cost at the Dakota companies' various stations, per net kilowatt hour put into the transmission line system.

Q. What is the line which has been colored reddish?

A. That is the cost per kilowatt hour to the Northwestern of the power purchased from the Dakota companies by it.

Q. So when you say under that line "Cost of power purchased by Northwestern from Dakota companies" you mean the cost to Northwestern Public Service Co.?

A. That is what I mean.

Q. Now, do I understand you to say that this graph and the lines on it are based upon the evidence in this case?

A. That is correct.

Q. And in the cost of power purchased by the Dakota companies from Northwestern there is the five mills, plus the amount spent from period to period indicated by the chart and the testimony for interconnection charges and interchange capacity charges?

A. The three are included in that unit price.

Q. Will you explain what you include in production costs as to inclusion or elimination of fixed charges, as used in this graph, Exhibit 96?

A. In my use of the word or figures, "production costs" I have used nothing in them for interest, depreciation, taxes and insurance.

Q. What have you used?

A. I used the cost of the labor, cost of fuel, cost of repairs, miscellaneous supplies consumed from time to time.

Q. Is the same average production cost used in Exhibit 95? A. That is it, the same thing.

Mr. Benson: We offer in evidence Plaintiff's Exhibit 96.

Mr. Royhl: To which the defendant objects for all of the reasons and all of the grounds urged to Exhibit 95.

The Court: Overruled.

Q. Will you refer to the fourth page of Exhibit 95?

A. Yes, I have it here.

Q. Mr. Helmick, will you refer to the 4th page of Exhibit 95; will you have in mind the pleadings in this case show that the Northwestern Public Service Co. paid five mills for the energy delivered to it. Will you compute the difference in dollars on 12,550,381 kilowatt hours delivered to Northwestern Public Service Co., the difference between 8.15 mills and 5 mills?

A. The difference is 3.15 mills on kilowatt hours just mentioned. My slide rule extension on that shows a net product of about $39,500.00 for that period.

Q. Now, will you turn to the fifth page, and taking the number of kilowatt hours delivered to Northwestern Public Service Co. during the period shown on that page, and compute the difference between that 7.66 mills and 5 mills, in dollars?

A. The difference in mills is 2.66. 11,869,145, gives slide rule answer of $31,600.00.

Q. Will you turn to the 7th page and give the difference between 5 mills and 8.61 mills shown on that page and the number of kilowatts delivered to Northwestern Public Service Co., according to the figures on that page?

A. The difference is 3.61 mills, multiplied by the total in kilowatt hours, 44,798,846, gives a slide rule figure of $161,800.00.

Q. And the aggregate of all three of those figures is how much? A. $232,900.00.

Q. That is the aggregate difference between the 5 mills and the costs at Aberdeen that you have set forth in your exhibit? A. That is correct.

Plaintiff's Exhibit 97 was received in evidence.

Exhibit 97 is an order of the Board of Railroad Commissioners of the State of North Dakota dated the 8th day of August, 1939. It contains findings of fact, conclusions and order of said Board of Railroad Commissioners in a case before said Board entitled "In the matter of the valuation upon the Commission's own motion of the properties of the Northern Power and Light Company actually used or useful for the convenience of its customers within the State of North Dakota, for the purpose of ascertaining the reasonableness and justice of rates and charges for service."

The order recites the date of the hearing in said proceedings, the appearances on behalf of the Commission and on behalf of the Northern Power and Light Company, including the appearance of C. L. Sandstedt, Vice President and Treasurer, Huron, South Dakota, and contains, among other things, the following:

Valuation.

The Chief Engineer for the Commission introduced in evidence Exhibit No. 1, which is an historical and a cost of reproduction appraisal of the physical property devoted to public use of the Northern Power and Light Company, as of December 31, 1937. Exhibit No. 2 is a statement showing the net construction additions from December 31, 1937 to June 1, 1938. These were taken from the records of the Company. Exhibit No. 6 shows the property located in North and South Dakota. Exhibit No. 7 portrays the allocations between the Electric and Steam Heat Departments.

For the sake of convenience, the summaries of Exhibits Nos. 1 and 2, taking into consideration the allocations of Exhibit No. 7, are shown in tabular form.

	Historical Cost as of Dec. 31, 1937	Net Additions to June 1, 1938	Total Historical Cost
Electric Dept.	$2,582,390	$ 44,483	$2,626,873
Steam Heat Dept.	103,426	.....	103,426
Totals	$2,685,816	$ 44,483	$2,730,299

	Reproduction Cost as of Dec. 31, 1937	Net Additions to June 1, 1938	Total Reprod. Cost
Electric Dept.	$2,725,065	$ 44,483	$2,769,548
Steam Heat Dept.	114,705	.....	114,705
Totals	$2,839,770	$ 44,483	$2,884,253

Commissioners' Exhibit No. 3 consists of reproduction cost less depreciation, as of December 31, 1937. Below is a tabulation showing the summary, properly allocated, together with net additions to June 1, 1938.

	Electric	Steam Heat	Totals
Reproduction Cost	$2,725,065	$ 114,705	$2,839,770
Depreciated Value	2,268,351	88,746	2,357,097
Net Additions to June 1, 1938	44,483	.....	44,483
Net Depreciated Value	2,312,834	88,746	2,401,580

The present condition of the property as a whole is derived from the above tabular statement, but in order to establish the per cent condition of the depreciable property, it is necessary to deduct real estate values.

	Per Cent Condition	
	Total Property	Depreciable Property
Electric	83.2	83.1
Steam Heat Dept.	77.4	77.4

Commissioners' Exhibit No. 4 consists of accrued depreciation based on historical cost, as of December 31, 1937; the tabulation below shows the summary with allocations, together with the net additions to June 1, 1938. The depreciated value is the historical cost less the accrued depreciation.

	Electric	Steam Heat	Totals
Historical Cost	$2,582,390	$ 103,426	$2,685,816
Depreciated Value	2,149,338	80,117	2,229,455
Net Additions to June 1, 1938	44,483	.....	44,483
Net Depreciated Value	2,193,821	80,117	2,273,938

Section 4609c37 of the Compiled Laws of North Dakota specified certain items that must be found by the Commission before determining the fair value of the property under consideration. They are as follows:

Subsection (a) Land $23,371

Subsections (b) and (c) (See Transcript, Page 5, Lines 8-13.)

Subsection (d) (Exhibit No. 3.)

	Electric	Steam Heat	Totals
Reproduction Cost	$2,725,065	$ 114,705	$2,839,770
Land	22,812	559	23,371
Reproduction Cost Less Land	2,702,253	114,146	2,816,399

Subsections (e) and (f)

Depreciation	456,714	25,959	482,673
Deprec. Reprod. Cost Less Land	2,245,539	88,187	2,333,726

Depreciation.

Commissioners' Exhibit No. 5 shows the annual accrual for retirement reserves by departments. From a study of this exhibit and other pertinent material contained in the testimony and exhibits offered in this case, the Board finds that an annual depreciation expense allowance of 4 per cent for the Electric property and 3 per cent for the Steam Heat property will compensate the utility for all factors of depreciation existing in its property. This depreciation is to be computed on the straight line basis. The total annual depreciation expense allowance will be computed on the historical cost basis of the depreciable property.

Going Concern Value.

It is a contention of the utility here under consideration that an allowance for going concern value must be made. This amount they contend to be $250,000. As composing this amount, the utility lists the following items: establishment of transmission systems, lowering of rates, organization development and personnel relationship between employee and employer, satisfactory public relations, growth of business, and its connection with an integrated system. No breakdown was made of the total sum contended for into these various component parts.

The Commission, while recognizing that there is a difference between a "bare bones" plant and one with business attached and functioning, is not disposed to make a lump sum separate allowance to compensate for such difference. The utility places a value upon its going concern of $250,000. No probative evidence was offered to substantiate that figure or any other figure. No attempt was made to show what weight was given to any one item. The proof does not support a claim for such value in a lump sum.

The Board is not impressed by the contention of the utility that going concern value must be recognized because of the change from isolated plants to transmission systems. It appears obvious that such was a natural and necessary trend of the industry. Any failure or neglect to so do would brand the management of this utility as inefficient.

Mr. Royhl: The defendant objects to Exhibit 97 as incompetent, irrelevant and immaterial for any purpose; self serving and hearsay so far as the defendant is concerned; not within the issues in this case.

Mr. Benson: These common officers were officers of these companies at the time the exhibit was made.

The Court: It will be received.

Cross Examination: by Mr. Royhl.

Q. How old did you say you were, Mr. Helmick? A. 55.

Q. You are a graduate engineer. A. That is correct.

Q. With what degree?

A. B. S. in Engineering, University of Minnesota, 1915.

Q. Is that electrical or just civil engineering?

A. That is all. You do not get civil engineer's degree or electrical engineer's degree until you take your fifth year.

Q. Did you take the fifth? A. I did not.

Q. Since that time I think you said you had been with the government?

A. I was with the government for a period of about a year from the time of my graduation from college until I went into service in 1917. I went into service. I think it was March. Whenever war was declared in 1917.

Q. How long were you in that service?

A. I was in that service, I got back from France, in I think, April or May, 1919.

Q. You did some municipal work then, or did you go back with the government?

A. I went back with the government then for about two months.

Q. Then what was your experience after that?

A. I think it was about the middle of the year, the first of July, I went with St. Anthony Falls Water Co. Minneapolis Mills Co., Minneapolis.

Q. What was your work there?

A. I was engineer of maintenance and laying out minor improvements. It was largely operational problem and Minneapolis Mills Co. and St. Anthony Falls Water Co. owned all of the power rights. In some cases they owned the water rights, and in other cases they owned the power plants. They sold water and kilowatt hours.

Q. Well. what were you duties?

A. I was engineer and worked on maintenance, and design of such new structures as were put in.

Q. How long were you there?

A. I was there until about March or April, 1922.

Q. Then did you set up an office of your own?

A. No. Mr. Ralph Thomas who was senior engineer to

me in St. Anthony Falls Water [Falls] Co. and Minneapolis Mill Co. and with whom I had been working left the St. Anthony Falls Water Power Co. in the spring, I think January or February, 1922, and asked me if I would come with him. He set up a business in his own name and I was his associate.

Q. Was your work during that time largely water power? A. It was water power, some.

Mr. Benson: Which time?

The Court: That probably refers to the time when he went—

Q. With Mr. Thomas, in 1922? What was your answer when you were interrupted?

A. Do you mean specifically April, 1922, or some other date?

Q. Yes, and thereafter?

A. For the first four or five years, I would think that would be from 1922 to 1926 or 1927, I think the majority of our work was water power. It then shifted and became largely, in the '30's at least, steam power with some Diesel and practically no water power. Water power in the '30's was not very popular.

Q. Were you with Mr. Thomas when you made your first visit to the Northern Power & Light Co. property?

A. That is right.

Q. And that, if I understand you correctly, was in 1926? A. That is my recollection.

Q. In what capacity did you go there?

A. I went out to Mobridge in charge of the field parties we had taking inventory. I lived at Mobridge.

Q. For whom were you working?

A. Northern Power & Light.

Q. The company had been organized at that time, had it?

A. That was the corporate name of the company in 1926. May I get a copy of that appraisal?

Q. Yes?

A. This is a report of the appraisal that was made, if you want to look at it.

Q. Was this just a straight appraisal?

A. Will you tell me what you mean by straight appraisal?

Q. Just a tabulation of the property?

A. It was a take-off of the quantities and price and extension of the units found, adding up in certain sizes. If I recall there are also notes in there of the condition of the various pieces of property as of January 1, 1927.

Q. Is there anything in this that shows the life of the properties of the Northern Power & Light Co. at that time?

A. I think there is a present condition in there of all of this, varying from 100% down, which will give you an indication of what our opinion was at that time.

Q. When, with regard to the period that you made the survey, did you make the installation of this property?

A. The turbine and boiler that was put in at Mobridge, that is quite a long while ago and I didn't keep a diary, but my guess would be approximately 1927. If you can tell me the date at which this property was transferred to United Public Utilities, I can tell you, because I remember we were just getting that turbine on the line at the time that transfer took place.

Q. Was that installed at the time of the Lucas & Luick study? A. No. We antedated that.

Q. You think you installed this equipment prior to the Lucas & Luick—

A. At Mobridge, that is correct.

Q. If that Lucas & Luick study was made approximately early spring of 1928, it would be before that time, would it?

A. That is right. I think it was in 1927, sometime. It is a long time ago.

Q. Did you or your firm make the specifications of the installation that were made there in 1927?

A. Yes. We drew the plans and specifications, for the boilers and specified use of Westinghouse turbine.

Q. Did you personally have charge of that?

A. It was in our office. I spent half of my time on it.

Q. How long were you there? A. In Mobridge?

Q. Yes?

A. I was there in Mobridge spasmodically at the time it was put in. I was not there permanently. We were not con-

tractors. All we did was draw plans and specifications and go out to check it occasionally and see it was put in according to plans and specifications.

Q. After you completed this survey that you have mentioned sometime in 1926, and also the designing of some improvement at Mobridge, after the completion of that, were you back on this property any more? A. No sir.

Q. At any time? A. Not until in the fall of 1946.

Q. Was that after this litigation was instituted or about the time it was instituted?

A. I don't remember when it was instituted. I know when I was out there. If you know when it was ins ituted, I can answer that.

Q. You say in the fall of 1946. Now, when you were out on the property, you told us about one trip that you took from Aberdeen to Barnard and back to Aberdeen?

A. That is right.

Q. And then you went west to Ipswich and went around a lake to Gettysburg? A. No.

Q. To where, Bowdle? A. To Ipswich.

Q. Where did you go from Ipswich?

A. From Ipswich we came back to Aberdeen and then went south of Huron.

Q. Other than that were you on these systems personally to make any observations? A. No.

Q. Then since 1927, or thereabouts, the only time you have visited the properties was as you have now related?

A. That is correct.

Q. From there you went south to Huron?

A. From Aberdeen we went south to Huron.

Q. Were your various opinions based upon any information or knowledge that you got from the Day & Zimmerman study?

A. I didn't actually ever see or read the Day & Zimmerman study.

Q. You haven't? A. No.

Q. Were your studies which you have submitted here and various opinions you have given, were they in whole or in part predicated upon the Sargent & Lundy study of this property?

A. Well, now, if you would be a little more specific in your question as to what study you are talking about. That is sort of a shotgun question as far as I am concerned.

Q. Have you seen the Sargent & Lundy reports?

A. Yes, I have seen the Sargent & Lundy report.

Q. I am referring now to Exhibit 52. You are familiar with that? A. I have read that.

Q. I think you said you based your opinions and your studies in part upon this Sargent & Lundy report, which is marked Exhibit 55?

A. I believe I agreed to one or two particular paragraphs in that report in direct examination.

Q. Did you testify that Exhibit 52 was one of the documents on which you gave your opinion?

A. I believe I testified that a part of the exhibit, whatever that number is, I believe part of that exhibit was read to me and I was asked whether I agreed with that. I said that I concurred. I don't know of any other reference made to it.

Q. You understood that Exhibit 52, was prepared by Sargent & Lundy in June, 1936, didn't you?

A. I could not have told you what date it was. I knew it was about that time. In the early or middle period. If you had asked me I could not have told the date exactly.

Q. Do you agree with the Sargent & Lundy report, Exhibit 52, wherein it says "From the above it is evident that additional capacity must be provided as soon as possible"? A. May I look at it?

Q. Sure.

Mr. Benson: Is that in the portion that I read to you?

The Witness: It is not in the portion you read to me. It is the sentence which follows what you read to me. "From the above it is very evident that additional capacity must be provided as soon as possible."

A. I agree that additional capacity was needed.

Q. Now, in view of the fact that you had not been upon the property since 1927 until 1946, and in preparation of your testimony in this case, did the plaintiff give you a copy of the Sargent & Lundy report for your education and enlightenment concerning the system?

A. I think I read the Sargent & Lundy report.

Q. You were, of course, familiar with the Lucas & Luick report of 1928? A. I have read that.

Q. Do you agree with the recommendations made in that report as to the necessity and requirement of additional generating capacity? A. Yes.

Q. And for improvement and reconstruction of certain of its transmission lines?

A. Would you be more specific in your question. There is a lot of recommendations in there.

Q. Referring to Page 29 of the Lucas & Luick engineering study, dated March, 1928, and I am reading from Page 29: "In any event the following factors appear paramount. One 22KV line should be remodelled to 40 KV. The main line should not be less than No. 1 00 conductor. Since 3-strand No. 6, equivalent to No. 1 or 3 has been used extensively in the Hughes Electric Co. system, this size has been assumed in most calculations." Do you agree that was a paramount matter in 1928 on the Dakota companies' lines?

Mr. Benson: Can you express an opinion without seeing the rest of it? A. This also very general.

Mr. Fellows: Objected to as improper cross examination; because he has not stated that portion as a basis of any opinion he has rendered. Further it is always improper to measure his opinion as against a report of that kind, which must be of substantive evidence. That was in for the purpose of showing some figures.

The Court: I think the objection is well taken.

Mr. Royhl: There wasn't any restrictions. They put this in evidence.

The Court: I don't know as his opinion, compared with that opinion is cross examination.

Mr. Fellows: It had to go into evidence in order for him to draw some opinion from certain portions of it.

Mr. Woods: It is a part of the document. It is not fair to say only part of it can be considered.

Mr. Fellows: You are cross examining a man within the scope of his direct examination. The Court has sustained it.

Mr. Royhl: I am trying to find out what he bases his opinion on.

The Court: Your question does not indicate that. You are asking whether he agrees with the opinion of someone else.

Q. As I understand it, this Plaintiff's Exhibit 82-14, the engineering study of Lucas & Luick, Engineers, under date of March 19th, 1928, was one of the matters that you had and considered, and one of the exhibits that you had and considered at the time you rendered the opinions and studies that you have made here today. Is that right?

A. I don't believe I included anything from that.

Q. You don't know that you included anything from that particular document, but as I understood you, this was one of the documents upon which you based your opinions?

A. It is one of the documents from which I took one figure that I had no personal knowledge of.

Q. Then did you consider the Lucas & Luick study for any purpose? A. Yes.

Q. Then do you agree with this study, and particularly Page 29 of it, in which it is stated, "In any event the following factors appear paramount. One 22 KV line should be remodelled to 40 KV. The main line should not be less than No. 1 or 00 conductor. Since 3-strand No. 6, equivalent to No. 1 or 3 has been used extensively in the Hughes Electric Co. system, this size has been assumed in most of the calculations"?

Mr. Benson: We object again, Your Honor, that was asked a few minutes ago, for all of the same reasons.

The Court: He was not questioned as to a particular statement in the report. Sustained.

Q. You have stated that certain transmission lines were rebuilt. Is that right? New lines were built from Wishek to Bowdle and Bowdle to Ipswich. Is that right?

A. That is what the record shows.

Q. You have stated that before being rebuilt they were 22,000 volt. Is that right? A. I believe so.

Q. And you have stated that it was sufficient?

A. That is correct.

Q. Then do I understand you disagree with the recommendation made by Lucas & Luick wherein they say that the 22,000 volt transmission lines are inadequate?

Mr. Benson: We make the same objection.

The Court: Same ruling.

Q. In 1928, when Lucas & Luick prepared this survey, Exhibit 82-14, which you had before you here in court, and in part based your opinions upon that exhibit, you understand, don't you, that when this was prepared there were no interconnecting facilities between the defendant and the Dakota companies? You understand that, don't you?

Mr. Fellows: We object to that as improper cross examination, this witness having said he based no opinion on any part of the Lucas & Luick report, but he had taken off one set of figures he didn't testify to.

The Court: Sustained.

Q. Will you indicate what part of the Lucas & Luick report, Exhibit 82-14, you used in the preparation of your opinion and as a foundation for your opinion expressed here in court in this case?

Mr. Fellows: We object to that, Your Honor, because that states facts not in evidence; improper cross examination. He said on his direct examination he based no opinion and conclusion on any part of the Lucas & Luick report.

The Court: Sustained.

Mr. Royhl: May I refresh the Court to this testimony taken shortly following the opening of court here today, wherein this witness testified that Lucas & Luick report, Exhibit 82-14, contains plans for tying North Dakota Power & Light and Northern Power & Light together; that he heard the testimony of Mr. Elvig concerning the accomplishment of the interconnection, and also his own testimony today concerning the loop Wishek to Wetonka.

Mr. Morrison: There certainly isn't anything in that.

The Court: The objection is sustained.

Q. As I understand, in arriving at your opinion, and in your examination by Mr. Benson as a foundation for your various opinions, that you testified not only once but repeatedly that you had considered all of the so-called 82 evidence, Exhibit 82 evidence. Is that correct?

Mr. Fellows: That is also objected to as misstatement of the testimony of this witness.

The Court: I think he testified to that effect, that he had examined all of the exhibits now designated as Exhibit 82. I think he said that. But I don't see that that is material. The fact he looked at them is not any proof he based his opinion on all of them. I don't think the basis for the objection is well taken. I think he did testify that he had examined all of the record 82. For that reason the objection is overruled. I don't think it is material because the fact he examined them does not controvert his statement that he did not use this particular report that you are referring to as a basis for any part of his expert opinion.

Mr. Benson: We interpose the further objection it is immaterial.

The Court: I don't know whether it is material or not. Counsel is trying that side of the case. Objection overruled.

Q. (Read) As I understand, in arriving at your opinion, and in your examination by Mr. Benson as a foundation for your various opinion, that you testified not only once but repeatedly that you had considered all of the so-called 82 evidence, Exhibit 82 evidence. Is that correct?

Mr. Benson: Just a minute. I think the witness should have the opportunity to be advised as to whether counsel means all of this mass of material that is marked Exhibit 82. Is that what you mean, counsel:

Mr. Robinson: That is what the question was.

Mr. Royhl: The Court has overruled the objection and I am waiting for an answer.

A. I have not gone through each page in all of those various books over there called general Exhibit 82.

Q. You have not? A. Not through every page.

Q. You have said on direct examination that it was necessary that 750 additional generating capacity be put into Ellendale, haven't you? A. I have so stated.

Q. And that additional 250 be put into Gettysburg. Is that right? A. I have so stated.

Q. And that those added power facilities, generating capacity, were necessary if the interconnections were closed. Isn't that right?

A. If the interconnections were closed?

Q. Or not closed, whichever you engineers use it. Were desired.

A. You mean if the interconnection facilities had never been made that these would be necessary? Is that the question?

Q. Yes. A. Yes.

Q. After they were in and they were no longer used, the same situation would arise?

A. I wish you would take out the "no longer".

Q. Do I understand, without the interconnection and the power and energy that were obtained by the Dakota companies from the defendant, if those were not available to the Dakota companies, that they would have to have these additional generating capacities? A. That is correct.

Q. I believe you said those generating capacities would cost approximately a quarter of a million dollars?

A. No, I did not so state.

Q. As of what date did you fix the necessity of additional generating capacity to the Dakota companies to the extent of 1000 KW? A. January, 1938.

Q. The load was about the same then as it was in 1936, wasn't it? A. Well, I got the figures here.

Q. Will you look?

A. I don't have the figures here. It is in this exhibit. We can look at it if you want to. There was very little change throughout those years, 1936, 1937 and 1938.

Q. Do I understand that as of January, 1936, if the Dakota companies had not had the advantages that they had coming from the interconnecting facilities, they would have had to have additional generating capacities?

A. They should have had them.

Q. And approximately to the extent that you have stated? A. That is correct.

Q. Now, with those additional generating capacities, would they have required that the transmission lines be strengthened?

A. That would have required some additional transmission lines—

Q. In addition to the 22,000—

Mr. Benson: Let him finish his answer.

Q. Go ahead.

A. Oh, I don't believe the lines would have had to have been rebuilt had those generators been put in.

Q. Are you sure about that? A. That is my opinion.

Q. Do you think the 22,000—Is that a KV line?

A. I don't know what ones you are talking about.

Q. Transmission lines from Bowdle to Ipswich. They would have been adequate, would they?

A. In 1937 and 1938 they were.

Q. What power did they have in Ellendale in 1936, if any?

A. They had around 300 or 400 kilowatts and engines.

Q. What was the load in that area as of that period?

A. Let's take the load diagram that shows the maximum load, the peak load for 1938. Here is 1939. Is that acceptable or do you want me to get 1938?

Q. 1939 is alright.

A. The green figure, as I interpret Mr. Stokke's interpretation, is the 15 minute maximum coincidence peak, here is December 31, 1937. The load at Ellendale, the green figure, which is 15 minute coincidence peak, is shown on the load diagram for December 21, 1937, was 260 kilowatts.

Q. Was that just for the town of Ellendale?

A. I would so take it.

Q. Wouldn't there be some area that would have to be served if you put additional capacity in there?

A. I thought you asked me for Ellendale.

Q. What area would have to be served by the station at Ellendale?

A. Here is load diagram for December 21, 1937. That shows 210 kilowatts at Ellendale. 50 on the Leola Wetonka line. 150 on the line from Ellendale to Wishek. 50 Wetonka. I wish Mr. Stokke would look at these as I quote them to be sure I am taking them off as he means them to be taken off. 100 from Wishek to Bowdle. 100 from Bowdle to Ipswich. 100 from Bowdle down on the Gettysburg line. 215 in the town of Gettysburg.

Q. In the town of Gettysburg? A. Right.

Q. Do you think that if you had not received on that

system, at the time that you have given here, any generation from the defendant, any energy from the defendant, that the transmission lines would have been adequate to have forced the energy around from Ellendale out to the 22,000 KV lines?

A. Mind you, there is also stations at Gettysburg, contemplated in this report. That station at Gettysburg with what was in there, had capacity to take care of not only Gettysburg but the load between Gettysburg and Bowdle, so that the distance, if you are talking about Ellendale, would have had to come down from Barnard, to Wetonka to Ipswich to Bowdle. I can get the distances and we can figure it out here.

Q. That considers, of course, a transmission line from Wetonka to Ipswich? A. That was in my estimate, yes.

Q. And I think you estimated it would cost some $52,000?

A. I have the exact figure here.

Q. $52,900.00 I think were your figures.

A. That is right. $52,900.00.

Mr. Morrison: That is from Leola to Ipswich.

The Witness: That is from Leola to Ipswich.

Q. I think you estimated that the thousand additional generating capacity would have cost $125,000.00?

A. That is right.

Q. Approximately, I mean? A. That is right.

Q. And this transmission line, Leola to Ipswich, would have been $52,900.00? A. Yes.

Q. Didn't you say they would have to have some more power at Ellendale? A. Later on. In 1941.

Q. I think you said they would have to have 500 more in capacity there? A. In 1941, that is right.

Q. And that, I think you estimated would cost some $70,000.00? A. That is right.

Q. Those would total approximately a quarter of a million dollars, would they?

A. Those figures, I haven't added them that way, but I have the figures, I will add them up. $248,000.00 was the total.

Q. Now, let me see if I get you right. At least in 1941 you considered they could not safely divorce this from the

interconnection facilities unless they would have that added expenditure, the Dakota companies could not safely divorce themselves from the interconnecting facilities without that additional investment?

A. They would have had to have had additional capacity.

Q. And I think you also stated that on your capital investment of that sort, a return of 12% was a proper and legitimate return? A. That is right.

Q. What would that amount to on the $248,000.00?

A. 12%?

Q. Yes.

A. It would have been about $30,000.00 a year.

Q. That would be $30,000.00 a year, wouldn't it?

A. Yes.

Q. Do you have among the exhibits before you and which you say you examined and upon which you based the opinions you have given here today, do you have before you a tabulation of the interconnecting facilities rental charge and the reserve capacity charge? A. Yes.

Q. From 1938 to 1941?

A. Yes, but I don't remember just what number it was.

Q. Do you have before you Plaintiff's Exhibit 82-9?

A. I believe so.

Q. Now, that covers 1930 to 1945, both inclusive, doesn't it? A. Yes, that is the way it looks to me.

Q. I believe you testified that during those years, 1930 to 1945, both inclusive, the interconnection facilities were connected up and operating? A. Yes.

Q. Now, will you indicate what amount was paid by the plaintiff or its predecessors for those years, 1930 to 1945, both inclusive, for rental of the interconnecting facilities?

A. I will have to add those up. Ten years at $20,000.00. $200,000.00.

Q. And that would be for a period of sixteen years, wouldn't it?

A. The total for those years for rental, $200,000.00, taken from 82-9.

Q. Now, you have before you Exhibit 82-9. What amount was paid for the years 1938 to 1945, both inclusive, for reserve capacity.

A. I will have to take time to add that up. It was about $116,239.20. I haven't checked the figure.

Q. Do I understand, Mr. Helmick, that these interconnection facilities were in force and working during the years 1930 to 1945, both inclusive?

A. That, I believe, is true.

Q. Now, you have said that Exhibit 82-9, which is the basis for your expert testimony, shows for those years the payment of $200,000.00 rental for the interconnection facilities, and an amount of approximately $116,000.00 for reserve capacity?

A. What is reserve capacity? Will you answer me?

Q. This is Mr. Elvig's exhibit. I am merely referring to that exhibit. You understand what I am talking about?

A. I understand the exhibit. But you asked about reserve capacity. I want to know your definition of reserve capacity.

Q. Do I understand, Mr. Helmick, from this Exhibit 82-9, that no payments were made by the Dakota companies for that claimed reserve capacity service for the year 1930 to 1937, both inclusive?

A. I should think the record would stand for itself.

Q. Is that the way you understand it? A. Yes.

Q. And that is the way you are basing your testimony here, is it?

A. I am basing it on this Exhibit 82-9 for what it shows.

Q. Now, will you say, Mr. Helmick, that these interconnection facilities and the so-called reserve capacity, were of no value to the plaintiff's predecessor companies?

A. It is my recollection, with the question kicked around quite a bit by the time I got it, I thought I was answering a question, that this so-called reserve capacity, as such, had no value.

Q. You didn't mean to tell the Court then, that the interconnection facilities had no value?

A. You mean this rental?

Q. Yes.

A. I simply say this, that it had value after the interconnection facilities were made instead of something else being done.

Q. And there wasn't anything else done, was there?

A. No.

Q. If there had been something else done you figure it would have cost the Dakota companies, meaning North-

ern Power & Light Co. and North Dakota Power & Light Co., $248,000.00 with a carrying charge of $30,000.00 a year? A. That is the way it seems to be.

Q. Will you show us in any of your studies, and in particular, your study 95 and your study 96, where you have given credit to the defendant for this $30,000.00 a year?

Mr. Benson: We object to that as improper cross examination because under the issues that are formed in this case, under our pleadings, we claim that we are entitled to it all because it was fraudulently and unlawfully charged. It was entered into fraudulently by the dual directors. It was put in for their own benefit a number of years before.

Mr. Robinson: I hardly think counsel means to imply that the plaintiff's allegations in its complaint constitute the proof in the case. I thought the purpose of our being here was to establish or disprove as the case might be, the allegations set forth in the complaint.

The Court: Counsel admits that he has not given you any credit for it because he claims you are not entitled to it. What is the use of asking this witness the question where counsel admits it.

Mr. Royhl: I would like to have it in the record.

The Court: It was a statement made by counsel in open court to that effect.

Q. Will you refer to Plaintiff's Exhibit 96? Do you have Exhibit 96 before you? A. Yes.

Q. As I understand it you prepared this personally?

A. Yes, on the basis of figures given in 82-9 and 10, and some of the others. On the basis of figures given to me.

Q. We are talking about the red line which appears to be the bottom graph line of the exhibit? A. Yes.

Q. Have you got that? A. Yes.

Q. You have printed in here with an arrow pointing to this red line,—Cost of power purchased by Northwestern—As I understand it, that means 5 mills?

A. No, not necessarily. If you will look over here on the left it is more than that.

Q. To make it so we will take it from the year 1933 to 1945. Those are the years involved in this litigation. Rather from 1936 to 1945.

A. They paid 5 mills per kilowatt hour for it.

Q. From 1933 to 1945? A. That is right.

Q. From 1930 I think you show 7-1/2 for part of 1930—

A. 1930, 7-1/2. 1931 is 7, 7, 7-1/2. 1932 is 6.6.

Q. What do you figure 1933? A. 1933 is 5 mills.

Q. Does that figure contain anything for the carrying charge on the interconnection facilities? A. No.

Q. That is, it contained no fixed charges of any kind?

A. That is correct.

Q. With reference to the line which you have indicated as the green blue line? A. Yes.

Q. Which runs pretty much above the other graph line?

A. Yes.

Q. Is there any name that indicates?

A. I believe there is a total cost of power purchased by Dakota companies from Northwestern. That line is the dollars they paid divided by the kilowatt hours they received. That is what that line represents.

Q. That starts in the year 1930, doesn't it? I presume perhaps January 1, 1930? A. Yes.

Q. Would that be on the basis of 11 months?

A. That is the way I read it.

Q. And it drops down from January 1, 1930, through 1932, to January 1, 1933, doesn't it? A. That is right.

Q. And for two years, that would be 1933 and 1934, I take it, as shown by Exhibit 96—

A. I think it would be three years. It would be 1933, 1934 and 1935, are the same. 1933—'34 and '35. These three years are the same.

Q. That is, the Dakota companies paid the defendant for the years 1933, 1934 and 1935, the amount of 5 mills per kilowatt hour for the energy received by the Dakota company from the defendant company? A. That is correct.

Q. That then included no fixed charges, did it, for those years? A. No.

Q. In fact, the Dakota companies had paid no fixed charges up to January 1, 1936, had they?

A. I believe that is correct.

Q. Then the spiral on Exhibit 96, where it goes diag-

onally across the year 1935, is not intended as the price spiral? I mean so far as the Dakota companies' spiral is concerned?

A. The price paid. In other words, the total dollars paid by the Dakota companies to Northwestern divided by the number of kilowatt hours received, at 10.6 mills. That is platted. It might have been better had I platted this on plat lines instead of this way.

Q. I don't find anything upon this Exhibit 96 to show that the Dakota companies, during the year 1935, paid other than just 5 mills for energy received.

A. That is correct.

Q. Then during the year 1935 there was no fixed charges included? A. Not that I know of.

Q. I think that is correct. Now, beginning in 1936, did you then start including fixed charges?

A. Yes, I think you can put it that way. To save a lot of time I would like to make one explanation. In this top line the green blue line, are the dollars that total three items. What they paid per kilowatt hour, what they paid for rent, and after 1938, what they paid for interchange capacity. It is the sum of those three figures divided by the kilowatt hours they used that gives this point. That is what they are. You can call them anything you want to call them, but that is exactly what is in there.

Q. Do I understand then, in an engineering way, that you have considered the rental charge on interconnecting facilities as a fixed charge or of that nature?

A. I simply considered it part of the cost of that purchased power. You can call it anything you wish.

Q. Was it also true that after 1938 in building up this Exhibit 96, the so-called reserve capacity was included in the nature of a fixed charge in arriving at your mill cost?

A. It is part of the total.

Q. And as I understand, you have included nothing of that same nature, fixed charges, in the line which you designate cost of power purchased by defendant from the Dakota companies?

A. There were no amounts paid for such items, and they were not included.

Q. At that time, or during the years covered by your Exhibit 96, as shown by the various exhibits that you

have had before you, they had built and paid for, the defendant had built and paid for the interconnection facilities, had they not? A. That is my understanding.

Q. They also had built and paid for a certain generating capacity, hadn't they, during that period, on their own system, company system?

A. Exhibit 96 does not show in any way, shape or manner the installation of any generating equipment by Northwestern.

Q. The various exhibits, however, from which you say you platted this chart, Exhibit 96, do show the installation of generating capacities by the defendant company, don't they?

The Court: Your last answer was not responsive to the question. He asked you whether or not they constructed certain facilities as part of their own system?

A. I believe they did.

Q. There is no fixed charges on the red line on Exhibit 96 covering those installed generating capacities?

A. No sir.

Q. Now, if you were to eliminate from the so-called blue green line, representing cost of power to the Dakota companies, if you were to eliminate from the charges included therein the fixed charges for rental and the so-called reserve capacity charges, the blue green line would parallel exactly the red line, would it not?

A. It would.

Q. I think I remember this correctly. You testified, I believe, that the socalled line or wire or transmission loss increased in relation to the load that was being carried on those lines. Is that right? A. Yes.

Q. That is, with a heavy load, losses would be greater than with a light load. Is that right?

A. Yes, of kilowatts. I explained it this way. The kilowatts actually lost would increase.

Q. In proportion to the load that the line was carrying. Is that right?

A. As the load goes up the losses increase.

Q. I presume you have examined the logs, say, of the Aberdeen station? A. I have looked at some of them.

Q. You recall, do you, that among the exhibits which

you mentioned as being foundation for your testimony, you had Exhibit 55-8? A. May I look at that? Yes.

Q. That is one of the exhibits which you used in the preparation of your testimony here on direct examination?

A. That is correct.

Q. And I believe it was the testimony of Mr. Elvig that these were representative days?

A. I think the record will show that. I think these were days that he took off, just as shown. Here is list of days, here is hours. He presented them as such.

Q. By reference to the Aberdeen log could you determine the flow of energy during the hours of those days out of the Aberdeen station and into the Aberdeen station?

A. I think so.

Q. Will you refer to the Aberdeen log which is a part of the so-called General Exhibit 55, and give the flow in and out of the Aberdeen station as between the Dakota companies, and the defendant, of energy?

A. For any particular date?

Q. We will start with the first day here that Mr. Elvig has. January 4, 1943. Now, will you show what hours on January 4, 1943, energy flowed from the Dakota companies to the defendant company?

A. The first column is the west line. The second column is north line. 10:00 a. m. the west line shows 0. The line with the letter "N" at the top shows—500.

Q. Would the bus tie be representative of in-flow and out-flow of energy between those two companies? Is there a column designated bus-tie?

A. There is transmission line with two columns, in and out.

Q. Will you indicate from this log what hours of the day over that bus-tie, energy flowed from the Dakota companies to the defendant?

A. Well, apparently, from 12 midnight up to and including 9:00 a. m.

Q. Then will you indicate during what hours of the day the energy flowed from the defendant company into the Dakota company?

A. On the basis of those columns, they show 6:10, 4:11, 1:00 at noon.

Q. Does that show flow in and out between noon and midnight? A. Yes.

Q. What does that show?

A. Well, 1:00 p. m. shows 100 kilowatt hours out.

Q. Going to Dakota?

A. Going to Dakota. From 2:00 p. m. to 6:00 p. m. it shows 200, 600, 300, 300, 200 from Dakota. This 7:00 o'clock seems to be split, there is 100 in "in" column and 300 in "out" column, 8, 9 and 10, show 0 kilowatts in, 400, 100 and 200 kilowatt hours out.

Q. Going which way?

A. Out to Dakota. 11:00 o'clock shows 400 in. 12:00 midnight shows 1200.

Q. Came into the defendant company from Dakota?

A. Yes.

Q. Will you look at the next day, January 5, which is set forth in this exhibit 55-8. Is that approximately the same? That is, that the energy is coming into the defendant company from the Dakota company after midnight until about eight or nine o'clock in the morning?

A. This shows kilowatts from midnight up to noon coming in.

Q. Up to when?

A. Midnight up to 9:00 o'clock, varying from 700 up to 1600 or 1700 kilowatts. From 10:00 a. m. to 10:00 p. m., going out in quantity from 0 to 700. Maybe some of these are 500.

Q. That is from ten o'clock in the morning until ten at night, the exchange of energy flowed from the defendant company into the Dakota company?

A. That is correct according to this log.

Q. Then after, beginning at eleven o'clock at night, the flow was coming from the Dakota companies to the defendant company?

A. That is right. That is what the log shows.

Q. Is that approximately the picture that appears on the 6th of January, which is the next day, as shown by Exhibit 55-8?

A. No. It varies here, in that Dakota from 1:00 p. m. to 6:00 p. m. put power into Aberdeen. That is where it varied contrasted with the day before.

Q. How much and in what quantity?

A. From 100 up to 500 kilowatt. Some of these are carbons and are pretty badly blurred, but that is the way I read them.

Q. Now, will you look at the 8th? The big inflow of power from Dakota to the defendant was between midnight and 9:00 o'clock in the morning, wasn't it?

A. It came in then in the largest volume. Here is January 4, 5, 6 and 8th.

Q. You have already told us about the 6th. What about the 8th?

A. You want it just briefly? From 12:00 midnight to 8:00 a. m. the power came from Dakota to Northwestern. From 9:00 a. m. to 3:00 p. m. the power went from Northwestern to Dakota.

Q. In pretty good sized chunks there, did it not?

A. There is a reading here of 1100. The next figure is blurred and I can't read it. 5, 6 and 7, it went out from Aberdeen station to Dakota companies. And then starting at 8:00 o'clock at night, reversed and started to come in.

Q. That is, the defendant, after 8:00 o'clock at night, started getting energy from the Dakota company?

A. That is what the record shows as I interpret it.

Q. From the examination you have now made, and your own knowledge of these logs in the preparation of this case, would you say that is representative of the flow between the Dakota companies and the defendant company?

A. No, I don't think it is. Bear in mind that this is January. I don't know what I am going to find. Let's look at it in the summer.

Q. Here is May 13th. Let's look at that. What time did the power flow into the defendant company?

A. On May 13, 1943, the power flowed from the Dakota company to Northwestern for all of the hours on that date except the hour of 1:00 p. m.

Q. Was there any power flowing out during that time?

A. 300 kilowatts at 1:00 p. m.

Q. Outside of that it was all coming in.

A. That is right. For the other 23 hours. Shall we look at another one?

Q. O. K. Would you look at May 13, 1943 again and see if there is any repair? Is it indicated that there was any emergency or repair?

A. I am not conversant with all of the details, I don't see anything that to my knowledge—there is no particular note that anything was wrong. Here is Saturday, the 21st.

Q. Of what?

A. August, 1943. It shows power in from midnight to nine.

Q. That is, the defendant was getting power from North Dakota?

A. Midnight to 9:00 a. m. shows power into the defendant. From 9 until 7 it shows power out to the plaintiff. And from 10 to 11 o'clock that night it shows power out to the plaintiff. And the sum of the column is for the day that the defendant received 57 kilowatt hours and sent out 42 kilowatt hours.

Q. Now, have you any way of determining in the exhibits which are before you, the periods of the system peaks on the Dakota companies?

A. I believe those are shown on our load diagrams. That is the only way I know of determining.

Q. And you had those before you, I think you said, in preparation for this testimony?

A. I looked at them since they were brought down here, yes.

Q. And these logs will show, on the Dakota companies, their day peak hours? A. I believe so.

Q. Do you refer to the exhibit marked 53? A. Yes.

Q. Can you tell us from Exhibit 53 approximately the hours of the day peaks of the Dakota companies?

A. All I can tell you from Exhibit 53 is what the peak was at this particular day on this particular hour. Whether it was anything else, I don't know.

Q. You say you used this in arriving at your line loss or transmission loss?

A. No. I used those books for determining the situation as regards the peak loads in the southeastern end of the system. I also used the figures for the hour in checking those supplements to Exhibits 19, 21 and 22, which is hourly computations of the coincidence peak demand.

Q. Did you examine the daily log curves for the maximum day's peak, the days of coincidence peak demand, when you was at Huron in the fall of 1946, and you had

blue prints made from them? Will those determine the so-called peak hours of the Dakota systems?

A. Let me look at them. No, I would not say that these would show the peak load of the Dakota systems. They show the total load of both systems.

Q. But they don't show the hours the Dakota companies are carrying their peak load?

A. I will tell you what they do show. They do not show that. They show just this, as I interpret it. They show the total generation by all of the plants on both systems for each hour. There is a curve at the top that is the addition, I presume, of the individual station log sheets, and this cumulative curve on all those sheets is the output each hour from each station that operated in both systems, and this superimposed curve which is the addition of those individual stations.

Q. The superimposed curve you speak of, that indicates the peak hours of the interconnected companies, you say?

A. It indicates the load each day, and indicates the total load of both companies at that particular day and hour.

Q. The time of the greatest load would be the peak demand?

A. The hour of the day of each particular year that was the largest would be the peak demand.

Q. In your examination would you say those peaks came at or about noon and at or about 5, or 6, or 7 o'clock in the afternoon of each day?

A. My study of the record showed that for the year, the various years, that the maximum coincidence peak generally occurred from 5 to maybe 6 or 6:30 in the evening, and that this curve I am looking at in particular shows that on Wednesday, October 16, 1946, the load at noon—I am reading figures from here—was 18,660 kilowatts. The load at 7:00 p. m. is 22,520 kilowatts. In between those places there are valleys.

Q. That is, the load was down? A. That is right.

Q. Now, in fixing your loss, so-called transmission loss, is that what you call it?

A. You can call it transmission line loss.

Q. You have to take into consideration in fixing that,

don't you, the time of the load on the wires of the Dakota companies? A. That is right.

Q. Have you prepared any tabulation or study which establishes that beginning in 1940 or 1941, that was stepped up to 30%? A. Yes.

Q. Will you present that? I mean outside of your estimate. Have you got any figures showing that? A. Yes.

Q. Will you let me see that?

A. Before I show it to you I would like to make this general explanation, if I may. The matter of determining transmission line losses when you are transmitting from one station a number of miles to another station, we will say from Bismarck to Aberdeen, or from [Buelah] to Aberdeen, which may be 250 or 300 miles. Now, you are transmitting over those lines power that goes into Aberdeen or Gettysburg. You are also transmitting on your own line for your own use power that is used in your own system at some place between the point of generation and the point of ultimate use in your own system. Alright. Now, if you consider, I mean with all those complications as come together, to determine mathematically, down to the last per cent, just how many kilowatts were lost, and where, I defy anybody to do and prove his answer. I am trying to give you—You asked me if I had figured transmission line losses—I am simply trying to show you that any figure I make, or anybody else sits down and makes, is only accurate insofar as the accuracy of his premises are concerned.

Q. Do you know whether or not energy which goes out on the so-called transmission line of the Dakota companies, is metered onto the lines? A. I believe it is.

Q. And, of course, it is a fact, isn't it, that except as energy got out on the transmission line of the Dakota companies, it could not be delivered to the defendant company, could it? A. That would be my interpretation.

Q. In determining so-called transmission losses, did you examine the logs for Bismarck, [Buelah], Mobridge and Aberdeen for a fixed hour or period of time as a coincident time upon all of those logs?

A. I didn't take any one specific hour of any one day.

Q. You didn't think that was necessary, I take it, to determine transmission losses?

A. That represented just one hour of that one day and only insofar as that was an average, was it worth anything.

Q. Could you have taken a period of a week or a month or a year and determine that by such method?

A. I believe so.

Q. You did not do that, I take it? A. Life is too short.

Q. Have you examined enough logs of the Aberdeen station or of all or any of the stations of the interconnected systems to have an opinion as to whether or not the bulk of the energy or power moving to the defendant from the Dakota companies was transferred at off peak times?

A. I have examined the logs.

Q. What is your opinion as to whether or not the bulk of that power was transferred to the defendant from the Dakota companies on off peak hours?

A. I think that is correct.

Q. Now, from your examination of these logs of the power station, have you formed an opinion as to whether or not the bulk of the power that was transferred by the defendant to the Dakota companies was transferred during the peak hours of the day?

A. What do you define as peak hours?

Q. I am asking you.

A. I want a definition of peak hours?

Q. We will say from 9:00 a. m. to 8:00 p. m.

A. Now, may I have the question again?

Q. (Read) Now, from your examination of these logs of the power station, have you formed an opinion as to whether or not the bulk of the power that was [gransferred] by the defendant to the Dakota companies was transferred during the peak hours of the day?

Q. 9:00 a. m. to 9:00 p. m.?

A. That would be my opinion.

Q. You have testified both on direct and on cross concerning your opinion that if the Dakota companies had added 750 new generating capacity at Ellendale and 250 new capacity at Gettysburg, or was that at Mobridge?

A. Gettysburg.

Q. And in 1941, I think you said, had added additional 500 of new capacity at Ellendale, that they could have

gotten along without any interconnection facilities with the defendant?

A. I testified, I believe, that if that had been done, that those stations would have taken care of the southeastern corner. By that I mean the loop, starting at Wishek, around through Ellendale, Ipswich, Bowdle, down to Gettysburg and back. That is what they would be required to handle if the high line from Bowdle west to Wishek were down.

Q. Would that have eliminated any requirement for interconnecting facilities with the defendant?

A. I think it would have.

Q. Now, with the thousand capacity so added in 1938, can you give us an estimate or have you an opinion, as to the probable cost, at least the average cost, of generating energy with that equipment so installed?

A. Yes, I have that cost. I am speaking of Diesels, for fuel oil, repairs, etc., would have been from 3/4¢ to 9 to 9-1/2 mills.

Q. From .75 mills to 9.5 mills?

A. No. 7.5 mills to 9.5 mills.

Q. Don't you have an exhibit before you, which you used in your testimony, showing the average cost of generations? A. For what station?

Q. For the Dakota companies' stations.

A. I will see. I have 82-11 showing production cost of generation in the principal plants.

Q. That would be of the Dakota companies?

A. That is right.

Q. Show you Exhibit 82-13, plaintiff's, and ask you if that was built up on the average cost?

A. This exhibit was presented by Mr. Elvig, entitled, 4th column, "Average cost per kilowatt hour in mills."

Q. The cost you have just given was 7.5 mills to 9.5 mills. Is that on the same basis as this average cost per kilowatt hours which has been built up by Mr. Elvig in 82-13? A. No, I don't think it is.

Q. Then I will ask you what the cost of generating energy on this new power that you would install to eliminate the necessity of interconnecting facilities would cost if it were computed on the same basis that Mr. Elvig has computed on Exhibit 82-13, the average cost per kilowatt hour?

A. I can't answer that without taking some time to do it. If you will give me a couple of days to go back to the record and figure it I will do so.

Q. In addition to 7.5 to 9.5 mill price, which was fuel cost?

A. No, it was cost per kilowatt hours of fuel oil, repairments, etc.

Q. It did not include labor?

A. No labor, no operating labor.

Q. That is what I mean. And that would be included, would it not, in average cost per KWH?

A. Average production cost per kilowatt hour would include that.

Q. That is a big factor in a small station, isn't it?

A. Well, it depends.

Q. You say you studied Lucas & Luick. Did you study Lucas & Luick on the cost of operating Diesel plants, utility Diesel plants? A. I don't remember that I did.

Q. Do you agree or disagree with this statement as contained in the Lucas & Luick exhibit, 82-14, that the average cost overall of generating energy by Diesel plant would be approximately 40 mills?

A. I can't agree or disagree without reading the whole text because you just can't take a part out of there and ask me to agree or disagree with any part of it.

Q. I refer particularly to Page 4 of the Lucas & Luick engineering survey, which is Plaintiff's Exhibit 82-14, which reads as follows: Dated March 28, which reads as follows: The operating costs of the oil engine plants was over $50,000 in 1927, but they produced less than about a million and a quarter kilowatt hours.—Based upon that would you say that the cost of operating a Diesel plant that you contemplated in the elimination of the interconnecting facilities, would cost approximately 40 mills to generate a kilowatt hour? A. I know it would not.

Q. You know it would not? A. I do.

Q. Can you state what it would cost, in your opinion?

A. I can tell you what the fuel costs, lubrication and maintenance would cost. I can't give you average production cost—what you want is this—

Q. Can you give us the cost?

A. I can't give it right now.

Q. Have you anything before you which you used in your testimony to show what the kilowatt hour cost was in the Gettysburg station, which was a Diesel plant on the Dakota property? A. I don't remember.

Q. Will you look and see?

A. Is there any exhibit with that information in it?

Q. You can't now give us the generating cost over the production of the Diesel plants that you were going to [instal] with this thousand additional?

A. I cannot give you average production cost at this minute.

Q. Did I understand you correctly on your direct examination that increasing the load factor on the [Buelah] station would not decrease the cost of the energy produced at that station for the use of the Dakota system?

A. I don't believe I testified about the [Buelah] station production other than to quote from this at any time, shape or manner. That is my recollection. The record would show.

Q. From your study of the records that have been submitted to you for your consideration in this testimony, can you say whether or not the [Buelah] station was the low cost station on the North Dakota companies?

Mr. Benson: You mean average production cost?

A. My recollection of the records is that the average production cost at [Buelah] was the lowest of any company on the system. Bismarck was second.

Q. I believe the question was asked you as follows: On direct examination: State whether or not, considering the relationship between companies, the furnishing of power to the defendant reduced costs per kilowatt hour of power used by the Dakota companies on their own system or systems.—To which you answered: It did not.—That is now your opinion, is it? A. I think so.

Q. And when you made that statement did you consider the effect of the increased load factor of the so-called [Buelah] plant on the major plants of the Dakota company?

A. When I made that statement I considered all of the Dakota plants I did not say this, that or the other.

Q. Then go back to my question, will you?

Q. (Read) And when you made that statement did you consider the effect of the increased load factor of the so-called [Buelah] plant on the major plants of the Dakota company?

Q. Which would include Bismarck and Mobridge?

A. I would say I did consider the load factor and averaged it on all of the systems, for your load, or load, that went to you and the load that went to our own companies.

Q. Your own system? A. Yes.

Q. Meaning plaintiff's predecessor companies?

A. The Dakota companies.

Q. Well, in arriving at this opinion which you gave, would it change your opinion if the load factor, the off peak power, off peak times, was increased on the major generating plants of the Dakota companies by virtue of the sales to the defendant company on off peak times?

A. Provided the load factor on other stations was not decreased.

Q. Will you produce the survey that was made by Thomas and your firm in 1926? A. May I have that?

Q. I show you Defendant's Exhibit 226, and ask you if that is the study you made or assisted in making, designated "Appraisal" during the year 1926 or 1927, and to which you have heretofore referred in this cross examination? A. I think it is.

Q. So far as the typewritten portions, are they in the same condition now as when made?

A. As far as I can see, yes.

Q. And did you refer to this Exhibit 226 at any time in the preparation of your testimony in this case?

A. I don't remember whether I did or not. I don't remember it.

Q. You did think to bring it along with you and you are producing it here in this case?

A. Yes. I didn't bring it along, as a matter of fact.

Q. You furnished it to counsel for the plaintiff, did you?

Mr. Benson: It was in these records you turned over and it came out here.

A. I haven't seen that since 1927 until it showed up here.

Q. Anyway, it is something you assisted in preparing back in 1926 and 1927? A. That is right.

Q. Do you have any knowledge or any record that you can refer to to show the age of the 22,000 KV transmission line from Wishek to Bowdle and from Bowdle to Ipswich?

A. As of what time?

Q. The original 22,000 volt transmission lines which you say were adequate to operate these companies?

A. I think you will find in that appraisal when it was made in 1926, of these transmission lines—may I delete that—you will find a per cent column.

Q. What I want is the age. Have you anything to show the age?

A. No, not the exact year that it was put in. All there is in here is a per cent column, meaning present condition. I do know that this whole Northern Power & Light Co. was integrated and put together with transmission lines within a period of two or three years antedating the date of this report, which would have made it probably 1924 or 1925, or something like that, and that transmission line, to all intents and purposes was new in 1926.

Q. Do you mean by that, that they were built, referring to the transmission lines you have identified, sometime between 1922 and 1926?

A. May I have the question as to which lines I identified?

Q. Bowdle to Wishek and Bowdle to Ipswich?

A. That would be my opinion that they were built some time in that period.

Q. The work orders would show when they were built, wouldn't they? A. They should.

Q. Did you examine those in making your survey?

A. I don't remember. It was a long time ago.

Q. Do you know when they were retired?

A. Do you mean retired on the books or physically retired?

Q. Both.

A. I would judge that the Bowdle Ipswich line was retired physically and from the books subsequent to the new line that was built between those towns. I think that would probably be about 1940.

Q. Do you have before you the work orders showing the retirement of the 22,000 volt transmission line identified?

A. It is not before me here. Whether it is in evidence I don't remember.

Q. I refer you to exhibit marked 82-21, and ask you if you have considered that in your testimony concerning the original transmission lines and the rebuilding of them, or the building of new lines?

A. I don't remember that I did. I don't think I looked at this until it was presented here and I have not read it in detail until just now. That is my recollection. I have seen so many papers I would not swear one way or the other.

Q. Does that Exhibit 82-21, show the retirement of the transmission line Bowdle to Ipswich?

A. All I can see here, I don't know, if this is what you mean, Retirement cost $3800.00. Is that what you refer to? I will have to run through it. Do you know the figure you are looking for in here? Point it out to me.

Q. My question is, does it show the retirement of that line?

A. If you will show me the place it shows it I will answer yes or no, but I don't see anything one way or the other.

Q. Does that show the fact that it was retired?

A. It says at the top to retire the present 22,000, volt, 3 phase transmission line, beginning one mile east of Bowdle substation and extending east to Ipswich, South Dakota, a distance of approximately 30 miles. Line 419. 29 miles actually retired. 510 miles remains in service. That is what it says on the work order.

Q. Do you observe also on this same work order, which is a part of 82-21, and which is also a part of the same sheet from which you have just read, the following: This transmission line is in bad condition. Some of the poles are becoming rotted. The ground clearance is poor. The line is under-insulated for use as 38,000 volt line. The conductor is 3 simple 8 copper stranded and is badly worn at insulator ties.—Do you notice that?

A. I just read it when you handed it to me.

Q. Did you consider it in reaching your opinion concerning the transmission lines identified?

A. In reaching my opinion? What opinion?

Q. Your opinion concerning the necessity and require-

ment and adequacy of the 22,000 volt transmission line that was so retired.

A. All I can say is this, in 1925 or 1926, the transmission lines from Gettysburg to Bowdle and Bowdle to Ipswich, etc. were built all about the same time. They were built with the same construction, same voltage, same wire, and I know personally that the line from Gettysburg to Bowdle, which was built practically at the same time, had the same construction as the Bowdle to Ipswich line was put in. I know that line is still in service.

Mr. Benson: Bowdle to Ipswich?

A. No. Bowdle to Gettysburg, which was built at the same time. That is twenty odd years since that line was built. It was built at the same time the Bowdle to Ipswich line. It is still in operation. Well, it could still be serviceable and why the Bowdle to Ipswich line was no good back in 1940, doesn't make sense.

Q. Speaking of the Gettysburg comparison, do you know whether or not the poles on the Gettysburg transmission line were treated?

A. I believe all of those poles were brush treated.

Q. Do you mean all of the poles on the Gettysburg transmission line?

A. That is my recollection, that the poles were the same.

Q. Do you mean to say that the poles were treated on the Bowdle to Ipswich line and Bowdle to Wishek line, were treated?

A. I think if you will look at the Wiley report, you will find on that report, made in 1937, that it shows the Bowdle to Ipswich lines were treated.

Q. I am asking you if you have any personal recollection of it, when you made your survey?

A. My recollection is that they were treated.

Q. They were all treated? A. That is my recollection.

Q. Now, you have predicated certain fixed charges in making computations which are a basis for some of your testimony upon the cost new, of new transmission lines from the points indicated, Wishek to Bowdle and Bowdle to Ipswich. Is that right?

A. I have taken figures given in the work orders and

substantiated by other figures as representing what was put into those facilities.

Q. And in those figures and on Page 2 of your Exhibit 95 you include in distribution, and entry, 2 automatic switches, $15,821.00, and you include WO 844, oil circuit breakers, indicated by initials OCB, $16,547.30?

A. That is under the Bowdle substation?

Q. Yes. A. Yes.

Q. And you also under the Bowdle station, you say, Work Order No. 758, OCB, meaning oil circuit breakers, $17,086.90? A. That is right.

Q. You include that. And you used those figures in arriving at a distribution and fixed charge in this case, didn't you?

A. I saw that these work orders show that that amount of money was spent for those facilities.

Q. And you include that in fixing your kilowatt hour costs, didn't you, by mills? A. I include part of it.

Q. As fixed charges?

A. I include fixed charges a part of it.

Q. Mr. Helmick, the OCB are one and the same thing with this other classification, automatic switches, are they not? A. I think they would be considered so.

Q. You have used both terms?

A. Oil circuit breaker might be manual or automatic. It is a method of disconnecting the circuit.

Q. You also include on Page 2 of Exhibit 95, the item under work order 692, Structure, $5120.59. You include that, don't you? A. That is correct.

Q. That, as I understand it, is the structure that carries these so-called automatic switches or oil circuit breakers?

A. I took it to be the structure that carried the breakers, and that the transformer was set [it], and all of these other items. That is the structure.

Q. Now, will you explain what the purpose of these automatic switches might be?

A. I would judge they was put in there to switch loads and isolate sections of the transmission lines.

Q. That is, so that if there is a fault, so-called line fault, it would not put all lights out over the entire system, isn't it? Is that right?

A. That would be my interpretation.

Q. That would isolate the line fault, wouldn't it?

A. It should.

Q. If there is a fault on one side of that automatic switch, you then cut, if you have generating power, the other side of it off from the other side, couldn't you?

A. If the automatic switch operated.

Q. Do they have any other purpose?

A. Oh, yes, the oil circuit breaker, if you want to kill a part of the line to work on it, or anything like that.

Q. That is not the fundamental use?

A. The fundamental use is to disconnect the line if there is a fault on it.

Q. So that is a matter entirely within the operation of the system itself, isn't it?

A. It is a part of a complete system, certainly.

Q. Whether or not there was an interconnecting facility between the Dakota companies and the defendant company, that line should have automatic switches?

A. I won't agree to that.

Q. You think then, regardless of the interconnecting facilities, that you could operate the two Dakota systems without automatic switches?

A. I think it could be done. Might I say a word there. You are bringing up the matter of automatic switches. I don't know whether they are automatic fuses there or whether they are circuit breakers. Take the one on the leg going down to Gettysburg, to Highmore and at Huron. Let's consider the necessity of this one switch just as an example. Here is the switch at Bowdle, go down through Gettysburg, we go over the interconnection to Highmore, and we go in over Northwestern to Huron. At the Huron end of that couple of hundred miles of transmission line is another switch, so that any fault between those two switches is isolated, substantially, to keep the rest of the system from being kicked out. My point is, for that set-up this type of equipment is needed, positively, but my further comment is that if, instead of tying Bowdle through to Huron, we had only the line Bowdle to Gettysburg, a matter of forty miles, on a stub line, that the same class of equipment was not needed at all.

Q. So is it your idea that in computing the value of the interconnecting facilities that the automatic breaker be-

tween Gettysburg and Huron should be used as a part of the cost of those interconnected facilities, on the defendant line? By the same analysis, do you still contend those automatic breakers that I have just called your attention to as appearing on Page 2, should be a part of any cost of transmission lines on the Dakota system?

A. I don't think they belonged to the Dakota system. I don't think, if you had had the Dakota system and its need, you would have had to put in that type of breaker. It was necessitated due to the fact it was piped through to Huron.

Q. You are now disconnected from the defendant company, aren't you? The Dakota companies are?

A. I don't actually know whether those switches are closed or open.

Q. Assuming now that there is no further interconnections between the plaintiff and the defendant, have they removed these automatic switches? A. I don't know.

Q. You say they could just as well remove them as not?

A. I don't think switches of that calibre are required for that service. Now that they are in there, I don't think they should move them.

Q. Let's carry this a bit further. Say from Bismarck and from Mobridge, would you say there was approximately 398 miles of transmission lines interconnected in the system of the Dakota companies?

A. I would not want to quote any approximate figure. That can be taken off the map quite readily.

Q. I think you said 298 miles from [Buelah] to Aberdeen.

A. I think the figures from [Buelah] to Aberdeen, via Mobridge, is 292 wire miles. From [Buelah] to Aberdeen via Bismarck and Ellendale is 298 miles. From [Buelah] to Bismarck to Wishek to Bowdle to Aberdeen is 300 miles, some of which are overlapping. Those are the distances.

Q. Would you say that there is at least 400 miles of line on the Dakota systems east of Mobridge and east of Bismarck?

A. I will read off the figures. You say east of Mobridge and east of Bismarck?

Q. Yes. That includes everything south.

A. You are talking about the main arteries, not the side lines?

Q. Everything. They are all interconnected.

A. It is going to take longer then.

Q. Apparently that adds up to 380 miles, approximately?

A. I think so.

Q. That doesn't include the stub lines? A. No.

Q. And they are substantial mileage?

A. What do you mean substantial?

Q. They are all interconnected?

A. They are all part of the system.

Q. Let's assume you had a line fault east of Bismarck and you had no automatic breaker, would the lights go out all over those 380 miles?

Mr. Benson: Objected to as improper cross examination. So far as the record shows there are automatic breakers at Bismarck and elsewhere.

Mr. Royhl: I am trying to find out if they are an element in the operation of the system, or element in the operation of the interconnecting facilities.

Mr. Robinson: He has included them as a part of the cost. We want to ascertain the purpose—

The Court: He has told you what automatic switches are for. I don't see how further questioning would add anything to it.

Mr. Royhl: For the purpose of the record we offer to prove as part of the cross examination of this witness or by this witness, that a line fault at a point east of Bismarck, if there were no automatic switches installed, would put the entire mileage in darkness, and the line fault could not be isolated in the operation of the Dakota system.

Mr. Fellows: We object to the offer as immaterial; assumes matters not in evidence; speculative; it is not competent; improper cross examination.

The Court: I don't see the materiality. Objection sustained.

Q. As I understand, and I am referring now, Mr. Helmick, to Page 2 of Exhibit 95. A. I have it.

Q. That is a computation of capital charges on transmission line increases?

A. That is a tabulation of investment and expenditures for transmission line increases.

Q. I observe that in a distribution of those amounts which include the oil circuit breakers that we have discussed here this morning, that you have allocated to the Dakota companies own use the amount of 20%. Is that right? A. That is right.

Q. Which, in this case, amounts to $25,692.00?

A. You are talking about the Wishek Bowdle line?

Q. The Wishek to Bowdle transmission line.

A. Yes. Approximately $25,000.00.

Q. And you have allocated to the joint use, 80% of that Bowdle Wishek line, or $102,000.00? A. That is right.

Q. Now, you say that that old 22,000 volt transmission line was adequate. Is that right? A. That is my opinion.

Q. How much was that carried for on the Dakota company's books? A. I don't know.

Q. Will you look, Mr. Helmick? I am now handing you Exhibit marked 82-23?

A. Opposite the caption, "Original Cost of Property Retired" $76,780.00. Then it says "How computed" and it says "Appraisal $239,460.00." I don't know what that refers to. "Cost to remove property retired" $8,000.00. Total $84,780.00. Then it says "Salvage material" $23,376.00. Total $23,376.00. Net retirement charge $61,403.32.

Q. And the only amount that you have charged to your own use of the rebuilt line is $25,692.00. Is that correct?

A. That is the figure on Page 2.

Q. I am speaking of your exhibit or study, Exhibit 95?

A. Yes.

Q. Do you show anywheres here where you have retired the amount of $61,403.00?

A. No, sir, I don't think it should be retired.

Q. I am asking you if you showed the retirement?

A. I said I did not show it was retired.

Q. What would have been the fixed charges on the original cost of the property retired, which you stated was $76,780.03, if it had not been so retired?

A. There is one misstatement in there. I didn't state what it was worth, Mr. Royhl, I read the figure from the

record, but if you want to use that figure, I would say 12%, which would be around $9200.00.

Q. When you prepared Exhibit 95, did you refer to your 1926 appraisal, which is Exhibit 226?

A. I don't remember that I did. In fact, I worked these figures up before I saw that copy. That showed up when these boxes were opened. I hadn't seen it for 20 years.

Q. I call your attention to Exhibit 226, which you say you prepared, or assisted in preparing, and ask you if it is not a fact that you priced this line at a total of $58,169.42 and $28,300.16, together with a 20% overhead?

Mr. Morrison: Objected to as improper cross examination. A matter he said he did not have before him when he gave his opinion, and hadn't seen for twenty years and didn't consider in this opinion at all.

The Court: I think the objection is well taken, if that document was not one of the documents he used in preparation of his evidence.

Q. Can you definitely state that this document, Exhibit 226, was not used by you in arriving at Exhibit 95, and the computations shown therein? A. I certainly can.

Q. And that you didn't use the material and knowledge that you had of this appraisal in Exhibit 226?

A. No sir. I didn't use anything in there at the time I made up my figures on this.

Mr. Royhl: At this time and for the purpose of making an offer of proof, the defendant offers to prove by this witness that this witness prepared in the years 1926 and 1927, an appraisement of the property involved in these transmission lines, to-wit: Bowdle to Eureka, Eureka to Wishek, as shown by Pages 239 and 240 of Exhibit 226, in which there was a total appraised valuation of the transmission line involved of over 88 thousand dollars, and which includes 20% overhead, as shown by the appraisement, page 233, all of which was prepared in part and approved by this witness.

Mr. Benson: Mr. Royhl, when you say these lines, you don't mean the lines he is talking about in Exhibit 95, do you?

Mr. Royhl: Yes, I am talking about Bowdle to Wishek which was alleged, one of the transmission lines which he challenges, on your theory that it was fraudulently conceived and carried out by the defendant interlocking officers and agents.

Mr. Benson: When you said "these lines" you meant the old lines, not the lines he was talking about in Exhibit 95.

Mr. Morrison: The offer is objected to for the reason it is immaterial. It appears from the testimony of this witness that the last exhibit was not used by him as a base upon which he based his opinion in this case, and that he had not seen or used or knew of this report for twenty years.

Mr. Fellows: For the further reason they are asking for an appraisal of a line which is no longer in existence, as the figures on Exhibit 95 refer to a line that was rebuilt years later.

Mr. Robinson: This witness has previously testified, Your Honor, the construction of these particular lines was unnecessary. That the old lines they are now objecting to here and speaking about having been retired, should not have been retired, and that they were ample to furnish the needs of plaintiff's predecessor, the Northern Power & Light Co. Now at this time, when we wish to have this witness tell the Court whether or not he took into consideration the value of those properties that were retired, when he was considering the cost of the new properties which took their place, they are objecting to having that part of the story told to the Court.

Mr. Morrison: That is not the situation at all. He has not used this record and he has testified he has not used it. The premise upon which Mr. Robinson works is not the one involved in the offer at all.

The Court: The objection to the offer is sustained.

Q. Now, Mr. Helmick, on Page 2 of Exhibit 95, and under the Bowdle Ipswich line, you insert a valuation of $50,850.00. Where did you get that figure?

A. That has been presented by Mr. Elvig in previous testimony.

Q. Did you verify it in any way except on Mr. Elvig's testimony?

A. I looked at the figures he had off the record. He showed it to me.

Q. Did you go to the records themselves?

A. I looked at the records that he showed me. There is some discrepancy in the record. I don't know whether it is 55 thousand or 50 thousand, and when he presented it he took the lower figure. The record is in court and was presented if you want to check out the details.

Q. Did you take into consideration the retirement of the old line? A. No.

Q. You do not show that then as an offset of any kind against the cost of the new?

A. I didn't figure the old line had to be retired. Why should I take it?

Q. I am asking you if you did? A. I said no.

Q. What exhibit do you now hold in your hand?

A. Defendant's Exhibit 82-21.

Q. And that was one of the exhibits which you used in verifying Elvig's figures, was it? A. I looked at it.

Q. It says here, total cost $37,871.29. Did you use that figure in any manner as retirement in creating the computation which you show on Page 2 of Exhibit 95? A. No sir.

Q. You did not? A. I did not.

Q. Referring again to Exhibit 82-21. In the preparation of your compilation, Exhibit 95, on Page 2, did you use the figure, original cost of property removed, $34,071.29?

A. I did not.

Q. Did you take into consideration the statement contained on the work order, Exhibit 82-21, as to reasons why work should be done, to-wit: "This transmission line is in bad condition. Some of its poles are becoming rotted. The grading and ground clearance is poor. The line is under-insulated for use as 38,000 volt line. The conductor is three-eighths copper stranded and is badly worn at insulator ties." Did you give that statement any consideration in the preparation of your Exhibit 95?

A. I will just repeat my testimony of this morning.

Q. Did you take that into consideration when you prepared your Exhibit 95?

A. I did not, because I didn't figure it was true.

Q. Well, is your Exhibit 95 predicated upon the intimate knowledge you have of the physical properties that were retired, as shown by your testimony?

A. My knowledge is this. The lines that are under discussion, Bowdle to Wishek, Bowdle to Ipswich, Bowdle to Gettysburg, were all made at one and the same time and the same construction. The line from Bowdle to Gettysburg is still in, still operating, 22 odd years after it was put in. For some reason that line is still good, but if for some other reason, apparently, the line put in at the same time from Bowdle to Wishek and Bowdle to Ipswich, all went to pieces all of a sudden and had to be pulled out according to someone's opinion, and replaced with an entirely new line, to me that doesn't make sense.

Q. When did you see the so-called Gettysburg line last?

A. Last fall.

Q. Did you travel the entire length of it?

A. Not the entire length of it.

Q. How much did you travel of it?

A. I went north out of Gettysburg, and I can't tell you exactly.

Q. Did you travel a mile on it? A. I don't remember.

Q. As I understand it, you have not seen any of these transmission lines except a minor part of the Gettysburg line since 1926?

Mr. Morrison: Objected to as repetition. He has answered four or five times and said he hadn't.

The Court: I think the objection is well taken. I think he has answered the question.

Q. In the preparation of your Exhibit 95, and in connection with your examination of the work orders which are Exhibits 82-21 and 82-20, concerning these transmission lines, you observed did you not that the retirement work order was signed by E. L. Bayles, on April 9, 1940?

A. I took cognizance of no signatures at the bottom, Bayles or otherwise.

Q. You didn't inquire of any of those men who signed this work order retirement? A. I didn't.

Q. I think that in your direct examination, Mr. Helmick, you said that the system loads could not be supplied

without the operation of the Mobridge and Bismarck plants. Is that right?

A. That is not the wording I remember as having made the answer "yes" to.

Q. What did you say?

A. I can give you my idea on it. I think I said that this 2 hundred and some odd miles of transmission line between [Buelah] and Aberdeen are materially helped and needed for the matter of stability and several other features of operation by either the Bismarck or Mobridge plants. I didn't mention it at the time, their putting kilowatts or kilovolts or amperes onto the line. I still think so.

Q. Would you say along with that, that the Dakota companies' systems were also stabilized by the interconnection at Gettysburg and interconnection at Aberdeen, by and through the defendant company?

A. I don't think there is any question but the end of their system was helped by that.

Q. Now, in discussing the Mobridge and Bismarck power plant installation and utilization, did you have in mind that Mobridge, in conjunction with generating energy, was also a central heating plant for the town of Mobridge?

A. I know that it was.

Q. And that same thing applied to the Bismarck generating plant? A. Yes.

Q. In operating those two plants, the Mobridge and Bismarck plants, to the point where they were furnishing sufficient spent steam with which to heat through their central heating units at those two points, they would generate some energy, wouldn't they?

A. That is involved, certainly.

Q. Have you any compilation showing what part of the energy generated at those two power plants, actually got on to the transmission line?

A. Not in kilowatt hours for the periods discussed.

Q. I am referring again to Exhibit 95. I am talking about Page 7, about the entry towards the bottom of that page which reads, 42,508 over 44,798,846, equals 0.95 mills. You have that in mind? A. Yes.

Q. I am also referring to Page 5, towards the bottom of the page, where you say, F. C. Cost per KWH, 12,830 over 11,869,145, equals 1.07 mills. A. Yes.

Q. And similar entry on Page 4, which reads, Cost per KWH, 18,025 over 12,550,381, equals 1.44 mills?

A. I see those figures.

Q. Now, where did you get the under figure of 12,550,381 on Page 4?

A. On Page 4, you see the dotted line across there at the middle of the page?

Q. Yes. A. Then you see "Net Kilowatt hours"?

Q. Yes. A. Then in brackets, 2,850,000 a year?

Q. Yes. A. Then you see 12,550,381?

Q. Yes.

A. Isn't that the same figure you just asked me about?

Q. What is that figure?

A. The net kilowatt hours for that period of time.

Q. In what? A. Kilowatt hours.

Q. As between the two systems? A. Yes.

Q. Then your total generation would be the sum of 12,550,381 and 2 million—where did you get your net figure from? A. From the record.

Q. What record?

A. I think it is in the complaint. I think it has been admitted.

Mr. Fellows: I suggest to the Court the figures are in the pleadings and are admitted in the answer as the correct number.

A. They were given to me by Mr. Benson from the pleadings.

Q. Do those pleadings also show what energy flowed the other way?

A. I don't think they do. Not to my recollection. The same remark will explain the other two pages you asked about.

Q. Have you got a copy of Exhibit 87, Plaintiff's Exhibit 87, being one of the documents you said you predicated your study and testimony on, was it not?

A. I think I said in talking about Plaintiff's Exhibit 94, I have a note on here that part of this came from Plaintiff's Exhibit 87.

Q. Now, you had Plaintiff's Exhibit 87 before you when you prepared your testimony in this case, didn't you?

A. Yes.

Q. Now, will you refer to Exhibit 95 again and also to the defendant's answer, Paragraph II, and the second cause of action, on Page 19 of the answer? A. Yes.

Q. I will ask you if that is where you got the figure that is shown on Page 4 of Exhibit 95, concerning cost per KWH, 12,550,381? Is that where you got that figure?

A. That is the same figure. That was the net kilowatt hours.

Q. Now, that as shown by the pleadings is the difference between what the Dakota companies sold to the defendant, 23,049,842 and what the defendant company sold to North Dakota companies, 10,499,461? A. I presume so.

Q. Will you verify that?

A. I will verify the arithmetic.

Q. Have you verified it?

A. The difference between 23,049,842 kilowatt hours of energy and 10,499,461 is 12,550,381.

Q. Now, in your Exhibit 95, Page 4, you arrive at a cost per KWH of 1.44 mills? A. That is fixed charges.

Q. Your fixed charges are just above that, a total of $3,051.00? A. The total.

Q. That is the total? A. Yes.

Q. And then you have an entry on this audit or compilation or tabulation, Exhibit 95, following that total fixed charge, you split that 50/50, and make $18,025.00?

A. That is right.

Q. Then you divide that $18,025.00 by the net kilowatts 12,550,381, don't you? A. Yes.

Q. That is the way you arrived at the figure, cost per kilowatt hour, 1.44? A. That is the mathematics of it.

Q. Now, if those fixed overhead and if those other instrumentalities upon which fixed charges are based for the transmission of energy both ways to arrive at your split 50/50, why didn't you make your division based upon the gross figure of 23,049,842?

A. For this simple reason. When all is said and done there was a net flow of kilowatts from Dakota Public Service Co. to Northwestern Public Service Co., and that excess was what amounted to anything as far as we was concerned. In other words we sent you 23 million and we got back 10 million and the difference is 12-1/2 million.

Q. We are still talking about fixed charges? A. Yes.

Q. That you, in your audit, Exhibit 95, charged to the defendant, 50%. Is that right? A. That is right.

Q. We can assume that the energy was not flowing both ways simultaneously? A. In kilowatts.

Q. For certain hours it flows one way and certain times it flows the other way. Is that right? A. That is right.

Q. Just assume, I am talking about your system of computing, let's assume instead of the defendant having furnished you 10 million kilowatt hours, that it furnished the Dakota companies 22 million kilowatt hours. A. Yes.

Q. That would leave a net difference of 1 million, wouldn't it, approximately? A. Yes.

Q. Then would you still have divided, as you have divided here, to arrive at the cost of kilowatt hours?

A. Let me get that straight.

Q. Let us assume for the purpose of your method of arriving at that figure, 1.44 cost per KWH, that the Dakota companies had furnished for the times covered by your Exhibit 95, on that page, 23 million kilowatt hours, and that the defendant had furnished to the Dakota companies 22 million kilowatt hours, would you have proceeded then to determine the cost of kilowatt hours by dividing fixed charge cost of 18,025.00 by 1 million?

A. Yes, I think I would have, for this reason.

Q. What would that answer have been?

Mr. Fellows: Let him give his answer.

A. In dividing this there, to carry these fixed charges, I don't care how you use it, all I am trying to get in on the basis of the facts that actually exist for the period are the facts that there was 18 thousand dollars of fixed charges that was, in my opinion, Northwestern's proper proportion of the additional interconnection facilities. To me it is a system of means attained to get that end. In making up my opinion I simply worked that in to convert it to the cost per kilowatt hour. If you wanted to just put it in there at so much, O. K. in other words, if you wanted to charge whether they got any kilowatts or not over. In other words, if you take the same hypothetical set-up here that has been made on the other interconnection contract, so much was paid there, $20,000, whether there was a kilowatt hour transferred or not. That was

the fixed charge. I am simply saying that these 18 thousand dollars on [thse] facilities is the same type of figuring. I don't care what number of kilowatt hours you divide it by it is an item of expense.

Q. You use that 1.44 on Page 4 in arriving at a cost at Aberdeen, figure of 8.15 mills, don't you?

A. That is right for the facts for that period.

Q. Now, we will go back to my problem. Supposing instead of being 12 million, there was 1 million, net. What would that have been, cost per KWH then?

A. I suppose it would have been about ten times this, 14.4.

Q. That is, it would have been 14.4 mills. Is that right?

A. That is right, approximately that.

Q. Then what would have been the cost at Aberdeen?

A. Well, you take the figure if you want to. I will divide it out.

Q. That would be something like 21 mills?

A. You are talking about the hypothetical cost of net interchange of 1 million. Is that right?

Q. Alright.

A. You divide 1 million into your 1802, I think that would give you 18 mills. Then you would have to add 5.37 and 1.34 would be 24.71.

Q. 24.71 mills. Then you would have added that on Page 4 to the production cost of 5.37 mills. Is that right?

A. That is what my figure included. I added the 5.37 and I added the line loss.

Q. And it made overall, what? A. 24.71 mills.

Q. That would have been in lieu of the figure you show on Page 4, Cost at Aberdeen, 8.15?

A. Figured that way, sure.

Q. I just want to demonstrate your way of figuring. You still think that is a correct way of figuring that, and have the Court use it as the mill cost of production, or cost at Aberdeen? A. I am not saying that.

Q. What is the purpose of this exhibit?

A. This exhibit, as I mentioned before, 18 thousand dollars--If you want to split up this fixed charge and put an entry of 18 thousand, that is one entry on the ledger. Then if you want to use for this period of time a cost of 5.37, plus 1.34, you are welcome to do it that way. You will get the same answer.

Q. You say you split that fixed charge—

A. You get the same answer in dollars for the power delivered.

Q. You say you split that cost of fixed charges 50%. Is that right? A. That is right.

Q. Who was carrying the other fixed charges, the other 50%. A. North Dakota.

Q. That would be the Dakota company? A. Yes.

Q. But there was still another 50%. Who was carrying that? A. We were, but you should have.

Q. Where do you show that you have used that fixed charge in determining the value of kilowatt hours that we sold to the Dakota company?

A. I don't show it because I am working on net kilowatt hours. That is the object of avoiding a lot of confusion.

Q. Is that same thing true of your computations on 5 and 7? A. That is right.

Q. Now, you say there was a gross for the period covered by Page 4 of the audit, Exhibit 95, of 23,049,842. The 23 million comes out of the answer that you saw here a minute ago? A. Yes.

Q. Now, then, did you figure the 23,049,842, at a cost of 1.15 mills at Aberdeen?

A. No. I took the net difference as I have said a thousand times in all of these.

Q. Then you don't want to have the Court understand that the energy was costing the Dakota company 8.15 mills at Aberdeen?

A. I want the Court to understand that the net kilowatt hours delivered at Aberdeen cost that figure, figure it any way you want to.

Q. But you arrived at that by this method?

A. That is right.

Q. Now, just to clear up the record and then I am through with that phase, you actually delivered at Aberdeen 23,049,842 kilowatt hours for the time covered by Page 4 of Exhibit 95?

A. I don't know whether it was all at Aberdeen. We delivered to the Northwestern.

Q. 23,049,842 at a fixed charge cost of $18,205.00. Is that right, according to your exhibit here?

A. That is right.

Q. And yet you say, to determine the kilowatt hour cost you would not divide the $18,025, that it cost you, by the 23 million plus which you actually delivered to the defendant? A. I say I didn't divide it.

Q. You say you shouldn't have, in order to arrive at a fair basis for the kilowatt hour cost under that fixed charge?

A. I talked about net kilowatt hours. I haven't used those figures at all. I say on the basis of net kilowatt hours delivered. They are my figures and I am standing on them. If you want to rearrange the figures, go to it, and suit yourself.

Q. Does the net figure mean anything in this law suit, the 8.15 mills? A. To me it does.

Q. What does it mean?

A. It means that on the net kilowatt hours that was the cost to the Dakota companies of delivering power, including mills per kilowatt. So many dollars for the whole bunch, including line losses, etc., delivering into your lines at Aberdeen and Gettysburg. That is my opinion.

Q. To make it extreme and as a matter of demonstration, assuming there had been a differential between deliveries from the Dakota company to the defendant company of a net one single KWH. Then would it be your idea that that net kilowatt hour cost $18,025.00?

A. Put it anyway you want to, as long as power flowed over these lines there was a fixed charge to be borne by both sides of approximately 18 thousand dollars, and whether you put x kilowatt hours or x million kilowatt hours, or 1/10 kilowatt hours, that money was there and it had to be paid for, and if you want to revert it to cost per KWH, that is your privilege.

Q. But you say on Page 4, Exhibit 95, kilowatt hour mill cost? A. That is right.

Q. Have you answered my hypothetical question as to what the cost of a net one kilowatt hour would have been?

A. I think I have.

Q. What did you say?

A. I said in your hypothetical case, $18,025.00, if it had been 1/10 kilowatt it would have been 180,000.00.

Q. Just following out the matter we have been discussing on Exhibit 95, I am now referring to Exhibit 96. Do you have that? A. I have it here.

Q. Did you figure the line, Cost of Power Purchased by Dakota Companies, from the defendant, on the basis of net kilowatt hours like you computed on Page 4, of Exhibit 95, as we have just reviewed it?

A. No. This is the cost of the energy purchased by the Northwestern from Dakota. This would be per kilowatt hour.

Q. That was figured on gross, wasn't it? Gross kilowatt hours sold by the Dakota companies to the defendant?

A. Yes.

Q. And sold by the defendant to the Dakota companies?

A. Yes.

Q. Calling your attention to Exhibit 69. You spoke of an error in computation? A. Yes.

Q. On what page is that? A. Page 3.

Q. Of Exhibit 69? A. Yes.

Q. That computation has to do with the interconnections between Northern Power & Light Co. and North Dakota Power & Light Co., does it not? A. Yes.

Q. And those companies were both part of the Dakota companies, weren't they?

A. That is right. It sets up a false figure of the whole structure.

Q. But that deals with the northern or Dakota companies, doesn't it? A. Oh, yes, that is right.

Mr. Royhl: That is all.

Redirect Examination: by Mr. Benson.

Q. On that exhibit you just had in your hand. I think Mr. Gazin made an omission of some figures, didn't he, in arriving at his statement that there was a profit of $2700, on energy at 3.5 mills?

Mr. Woods: Objected to as being immaterial; relating only to North Dakota Power & Light Co. and Northern Power & Light Co.; not proper redirect examination.

Mr. Benson: There is another error in there.

The Court: If there is any error material to the issues and you want to show it on redirect examination, go ahead. If it is not material, we don't want to waste the time.

A. It was not my opinion. There was an error of judgment in this report. This report contemplating that power, generated at [Buelah], could be delivered at Keldron and Driscoll, without sustaining any line loss.

Q. That is all between the Northern Power & Light Co. and North Dakota Power & Light Co.? A. Yes.

The Court: I don't think that is material here.

Mr. Benson: That is all.

Mr. Fellows: Plaintiff rests.

Mr. Stafford At the conclusion of plaintiff's case, the plaintiff having rested, the defendant now moves for judgment in its favor, dismissing the action, on each of the following grounds:

(1) The plaintiff has failed to prove the essential allegations contained in each of its several causes of action, which I will take up in a series.

As to the first cause of action it is an issue and the plaintiff must prove under Paragraph 13, that the $1666.66 monthly charge, provided in the 1936 contract was fixed by the common officers and directors, and that the defendant, unjustly, without consideration, fraudulently, unreasonably, unfairly and unlawfully, caused Northern Power & Light Co. to pay these sums. There is no proof at all in this record of any one of these charges. There is no proof that the defendant company did anything in connection with this contract or the charges therein contained. On the contrary the proof does show this to be the record: the 1936 contract was approved by the directors of Northern Power & Light Co. on October 7, 1936, at a meeting of that board, at which they rescinded a resolution adopted April 22, 1936, which approved a prior form of contract. That is Plaintiff's Exhibit 61. The minutes of April 22 are also put in evidence as Plaintiff's Exhibit 61-A. They show, as a part of that exhibit, the original consent and waiver to holding of

that meeting, and which was still in his file and possession. The plaintiff has offered parts from Mr. White's deposition, but from the other witnesses in Chicago, I submit there is enough in the parts offered, that shows Mr. White was with United Public Utilities; that these Dakota companies at all times from 1935 were subsidiaries of that UPU. The plaintiff also put in another exhibit, No. 92, the minutes of the Montana Dakota board of directors, held October 2, 1945, that show that the plaintiff acquired from the UPU all of the stock of Dakota Public Service Co. Therefore, they are the successor to the stock interest of UPU and White. There is enough in those proofs to show full knowledge in this case and ratification by UPU as to these matters, all of which is, of course, binding on the plaintiff.

(2) The minutes of April 23, the minute book which is offered in Plaintiff's Exhibit 82, shows that the consent, photostatic copy of which is in Plaintiff's Exhibit 61-A, is missing from that book. Of course it is missing, because it was not put there. At all times it reposed in Mr. White's files in Chicago. It was never returned. Thus there was no meeting on April 22, at all, because S. W. White, the fifth director, would not agree. Now, there was also put in, when the witness, Elvig, was being examined in connection with these two minutes, the minutes of the annual meeting of the stockholders of the Northern Power & Light Co. held April 21, 1936, and that is Defendant's Exhibit 219. I want to call the Court's attention to that meeting. In the first place it was held in Delaware, not out there where these properties are located. The minutes show that all of the stock was held, of the Northern Power & Light Co., was held by the Provident Trust Co., as trustee, for the outstanding securities of UPU, under its bond indenture. The stock of Northern Power & Light Co. was pledged by UPU to secure those bonds. Those minutes show the stock was voted by one of the proxies named by the Provident Trust Co. No connection with that gentleman with any of the matters here in this case or with any of these companies or with any of these individuals. No connection with the defendant company. No connection with any joint office or joint management which we have heard so much about. The

minutes further show that the Provident Trust Co. named in its proxy the Northern Power & Light Co. directors to be elected at that meeting, and, of course, the proxy cast the vote as directed by the Provident Trust Co. He had no discretion. There is no proof in this record at all of any connection between the Provident Trust Co. and the defendant company. It is obvious, therefore, there is no domination at all by the defendant, improper or otherwise. The Northern Power & Light Co. directors answer to another, namely, the stockholder which held all of the stock of that company, and that stockholder, I submit, is a total stranger to these proceedings. Therefore, under all of the circumstances, there being no domination by the defendant of any kind shown, there being no proof at all of any cause of action by the plaintiff as alleged in the complaint, the plaintiff has not made out any case.

There is also a charge in the first cause of action, and plaintiff must prove, under Paragraph 13, that the monthly charge of 1666.66 was without consideration. There is certainly no proof of this. On the contrary, the plaintiff's own witness, Mr. Helmick, who has just left the stand, testified Northern Power & Light Co. required these connections if they had not built additional capacity which would cost a quarter of a million dollars, and which, at 12%. would amount to $30,000.00 charges per year. There was certainly ample consideration for the charges in that contract. The testimony of this witness shows absolute necessity existed, in the figures for additional generating capacity and transmission facilities.

Now, in the first cause there is also an issue plaintiff must prove, under Paragraph 13, that the charges are unjust, unreasonable and unlawful in their entirety. There is no proof submitted of any of these allegations. Again the same witness, Mr. Helmick, testified. His testimony shows that the interconnections were vital to Northern Power & Light Co., and all that proves is the parties made a contract and the rates agreed therein were paid. That is all this record shows, and plaintiff's own evidence shows that these charges were fair.

Also that first cause of action puts in issue and the plaintiff must prove under Paragraph 10, that the interconnection facilities were built for the sole benefit of the

defendant. There is not a bit of proof of that allegation. There is only the pure inference which they seek to draw from the fact that the defendant, early in 1929, was interested in Pierre. But the plaintiff's own proof shows the defendant never went to Pierre, and on the original work order, they built around the corner at Blunt, away up north to Gettysburg, which certainly was solely for Northern Power & Light Co., which was short of generating capacity. Furthermore, there is nothing, even of this phantom character with reference to Gettysburg substation, Aberdeen substation, Aberdeen Barnard line, Aberdeen Ipswich line, and it is around these parts of the interconnection, and particularly the last three, that all of the plaintiff's expert testimony has been centered. The witness, Helmick, on the contrary, shows that the interconnection was absolutely essential to protect Northern Power & Light Co., which was weak, and if it were not maintained, Northern Power & Light Co. would have to invest a quarter of a million dollars and incur annual expense of 12% or $30,000 a year. It is perfectly apparent the interconnections [benefitted] the Northern Power & Light Co. and not the defendant.

Also in the first cause of action that have been put in issue and the plaintiff must prove, also under Paragraph 13, that the defendant did not comply with Section 205-D of the Federal Power Act in filing the 1936 contract with the Federal Power Commission. The plaintiff's proof, however, is exactly to the contrary. First there is no change in any rate provided in that contract over any rate previously filed with the Federal Power Commission. Section 205-D, on its face, applies only where there is such a change. The witness, Elvig, went on the stand and testified that the 5 mill charge, which is one of the two charges in the 1936 contract, he testified that 5 mill rate continued unchanged from January 1, 1933, all of the way down to October 19, 1945. There is no change there on the plaintiff's own proof. The $20,000 charge, $1666.66 per month, was established by this contract for the first time. So there could not be any change in that. I fail to see how Section 205-D could possibly have any application. 205-C is the section requiring filing in the first instance. And there is no charge or any proof of any violation of that section, and I don't under-

stand plaintiff so contends. Even if there were any change, plaintiff's proof again shows that the Federal Power Commission, as permitted under Section 205-D of the Federal Power Act, entered an order permitting that contract to take effect after other than thirty days after its filing date, namely, retroactively to January 1, 1936. That order is in Plaintiff's Exhibit 49, and that exhibit is a copy, among other things, of the order as embodied in the minutes themselves, of the Federal Power Commission.

So much for the first cause of action.

Now, the second cause of action. There is an issue under that cause of action and plaintiff must prove under Paragraph 2 that the defendant caused the North Dakota Power & Light Co. to generate energy during the period of September 1, 1935 to July 1, 1939, and transmit that energy to Northern Power & Light Co. And further that the defendant company caused the Northern Power & Light Co. to transmit that same energy to itself. It is also put in issue and plaintiff must prove under that same paragraph that the same defendant company, Northwestern Public Service Co., caused the Northern Power & Light Co. to pay to North Dakota Power & Light Co. for the energy between North Dakota Power & Light Co. and Northern Power & Light Co., at 5 mills. It is also put in issue in the same cause of action in Paragraph 3, that the officers and directors of the defendant company, who were also officers and directors of Northern Power & Light Co., caused the Northern Power & Light Co. to deliver that same energy to defendant. There is no proof of any of those in this record. There is no proof that the defendant company caused anybody to do anything. There is no proof that the officers and directors of the defendant company caused these things to be done. The minute books show that these directors and officers were elected by the same Provident Trust Co., as trustee; that UPU to be the beneficial owner in 1936, 1937, 1938 and 1939, each of the years for that entire period. They are completely separate from the defendant company. The UPU corporation and also Provident Trust Co. There is no proof in this record of any connection between either of those companies, who were sole stockholders, and the defendant company. The directors were elected by them and they reported to them, and if there was

any fiduciary duty owing, it obviously was due and owing to the sole stockholder which owned this company.

There is also an issue plaintiff must prove under that same paragraph, that the just and reasonable value of the energy referred to in this contract, to-wit: $94,184.86, computed at 7.5 mills per kilowatt hour. There is no proof of any such value in this record at all.

It is also in issue and plaintiff must prove this $2751.90 paid by Northern Power & Light Co. to North Dakota Power & Light Co. was unjust, unreasonable and unlawfully low. There is no proof of any of this in the record, and therefore, what Northern Power & Light Co. paid to North Dakota Power & Light Co., it seems to us, was entirely immaterial. It would only be money taken from the left pocket and put in the right pocket, for both of these companies are wholly owned by UPU through the entire period.

The third cause of action. This is with reference to the 1938 contract. It is an issue that plaintiff must prove under Paragraph 3, that the defendant caused this 1938 contract to be executed by both North Dakota Power & Light Co. and Northern Power & Light Co. There is no proof here again of anything done by defendant's officers and directors, except the bare signing of the contract. We repeat here each of the reasons stated in the first cause of action to show a total failure of proof of any of these allegations that the defendant or its officers or directors caused these things to be done. In addition we refer the Court to the fact that the minute books, which are all over there in Plaintiff's Exhibit 82, show that there were no meetings by any of these board of directors, either North Dakota Power & Light Co., Northern Power & Light Co. or Dakota Public Service Co., regarding this 1938 contract, or, for that matter, either on the 1939 contract or the 1941 contract, or the 1943 amendment. There being no meetings, it is difficult to see what those directors had to do with those contracts. There is only the bare fact the officers held office in each of these companies which were parties to the contract, and signed them. Certainly this falls far short of any domination or control of these companies by the defendant company.

Again the directors were chosen through 1936 down through to 1945, by the Provident Trust Co. What we have

said under the first cause of action in that connection applies equally here.

There is also an issue in the third cause of action and plaintiff must prove that the 1938 contract was entered into for the defendant's benefit, and to the detriment of Northern Power & Light Co. and North Dakota Power & Light Co. In that connection the witness, Helmick, again testified Northern Power & Light Co. was short at least a thousand KW in 1938, and another 500 KW in 1941, and required some 250 thousand dollars to protect the southeast end of the system. Thus plaintiff's own witness refutes this charge.

It is also in issue and plaintiff must prove in this cause of action, Paragraph 4, that the directors and officers fixed the $13.20 charge and that the defendant fraudulently, unreasonably, unfairly and unlawfully caused the Northern Power & Light Co. to pay that amount. Again there is no proof at all of this. The directors didn't even act on that contract, and there is nothing at all in this record as to either the defendant or the officers or directors requiring or causing payment of this sum of money. There is also an issue under that same paragraph 4, and plaintiff must prove thereunder that the rate of $13.20 was unjust, unreasonable and unlawful. I submit there has been no proof offered on that point in this record.

Again they charge the 1938 contract, just like the 1936 contract, was filed with the Federal Power Commission, and contrary to the requirements and provisions of Section 205-D. That is the same part and relates only to changes. The 1938 contract is what they are talking about. That contract established for the first time this rate of $13.20, and it is the only rate contained in that contract. How it can possibly be said to be a change in a pre-existing rate on file with the Federal Power Commission is beyond me. There being no change, of course Section 205-D had no application. It was initial rate filed for the first time and was filed under 205-C. But here again, plaintiff's own case shows that the Commission did enter an order permitting it to take retroactive effect, January 1, 1938, which the commission had a right to do under Section 205-D, and that order is embodied in the minutes of the Commission,

which also are contained in that same Plaintiff's Exhibit 49.

There is also an issue in this same third cause of action and under Paragraph 6. The plaintiff must prove thereunder a charge that this contract was a scheme, plan or device by the defendant and its officers for offsetting charges for energy sold to defendant. There is no proof at all of any conspiracy, any scheme, any plan, any coercion, any correspondence, anything that would go to show any intent or design of that character on the part of the defendant. This in addition to all of the other shortcomings in the proof to support the charges that the defendant caused these things to be done. We only have the bare allegations supported by statements of counsel from time to time during the presentation of the case.

The fourth and fifth causes of action. These involve the two 1939 contracts. So far as they repeat the charges as to the 1936 and 1938 contracts, and the same allegations are repeated in part, we repeat as to this charge all of the grounds which I have stated in support of this motion with reference to the first and third causes of action. These contracts are the same as the 1936 and 1938 contracts except for the changes necessary to reflect the merger, July 1, 1939, of Northern Power & Light Co. into North Dakota Power & Light Co., and resultant change of name of the survivor corporation to Dakota Public Service Co.

Therefore, we repeat as to all of the charges in the fourth and fifth causes of action concerning the two 1939 contracts and the payments made thereunder, the value of energy delivered thereon, which is similar to the allegations made in the first and third cause of action, the 1936 and 1938 contracts respectively, each of the grounds and reasons stated in this motion to the first and third causes of action.

Now, there is separately in issue under Paragraph 6 of the fourth cause of action and again in paragraph 5 of the fifth cause of action, and plaintiff must prove these allegations, that without complying with Section 205-D our contracts were filed with the Federal Power Commission. It suffices to say that Mr. Elvig and Mr. Helmick each show by their testimony, the 5 mill rate, and the $13.20 and $20,000, charge were not changed throughout this entire period. There being no change in those rates it is

difficult to perceive how Section 205-D, which relates only to changes in existing rates, as previously filed, can have any application. Mr. Benson himself insisted in argument there was no change in the 1939 contract.

That brings us to the sixth cause of action. As to that cause of action, again there are repetitious allegations as to the 1936, 1938 contracts and 1939 contract, and the operations thereunder. So far as those charges are repeated with reference to those prior contracts we again repeat as a part of the motion addressed to the allegations as contained in the sixth cause of action, each of the grounds and reasons stated as to the first, second, third, fourth and fifth causes of action so far as those allegations relate to those prior contracts or make similar charges as to the 1941 contract and the 1943 amendment thereto. For the same reasons we submit there has been no proof of any such allegations with reference to that contract or the 1943 amendment.

In addition there is no proof that defendant did any thing at all concerning this contract. That is, the defendant company. Or that the defendant company caused anything to be done, in either the execution of that contract, negotiations of that contract, performance of that contract, or in the generation or transmission of energy thereunder during the period embraced in the sixth cause of action, being July 1, 1941 through October 19, 1945. There isn't a shred of evidence to support any of those allegations.

In the sixth cause of action there is also an issue that plaintiff must prove under Paragraph 5 of that cause of action, that this 1941 contract was also filed with the Federal Power Commission and again without complying with Section 205-D. Once more I call the Court's attention to the testimony of Mr. Elvig and Mr. Helmick, plaintiff's wtinesses, that these charges continued uninterruptedly, without change at any point. Their own exhibits show it. Therefore, there being no change in the rates or charges provided in the contracts, again Section 205-D, which relates only to changes, has no application. And here again we have in the evidence, this time Plaintiff's Exhibit 50, an order of the Federal Power Commission, ordered in the minutes of the Commission, which permitted the filing of

the 1941 contract, and its taking effect retroactively as of July 1, 194[illegible].

As to the 1943 amendment, I don't understand there is any such charge in the complaint and, of course, on its face, the amendment is a two page document which is attached to the final part of Exhibit F. It was April, 1943, to take effect thirty days thereafter.

That brings us to the new causes of action which were added at the beginning of this trial, 7, 8, 9 and 10. 7 and 8, the 1936 contract and 9 and 10, the 1939 contract. Both I think are identical and relate to allocation of joint management expenses. Of course, in this cause of action the same pattern is followed, that the defendant caused the North Dakota Power & Light Co. and Northern Power & Light Co., in 1936, and the Dakota Public Service Co. in 1939, to enter into these contracts, and again that the defendant caused those two companies to make payments thereunder. There is no proof in this record of that. There is no proof that the defendant caused the contracts to be executed or caused any payments to be made thereunder or caused any of the other things alleged in this cause of action to be done. They stand exactly on the same plane, and so far as the allegations that the defendant caused these things to be done, as do all of the other allegations in the complaint. The only proof is two contracts were executed by the companies named. It is admitted in the answer, and that the amounts were paid as shown in the answer to the interrogatories. This, we submit, falls far short of sustaining the essential allegations in these four causes of action.

Now, as a separate ground in support of this motion, so far as any proof offered by the plaintiff relates to or bears upon allegations in any of the ten causes of action, relating to reasonableness or unreasonableness, justice or injustice, fairness or unfairness, of any of the rates and charges provided for in all these contracts, the proof is in itself outside of the province of the case for the reason that such matters are legislative only. They go to determine the rates and charges for utility matters and they cannot be inquired into or determined by the Court.

I respectfully urge in this connection and in support of this motion all of the reasons which were assigned and in

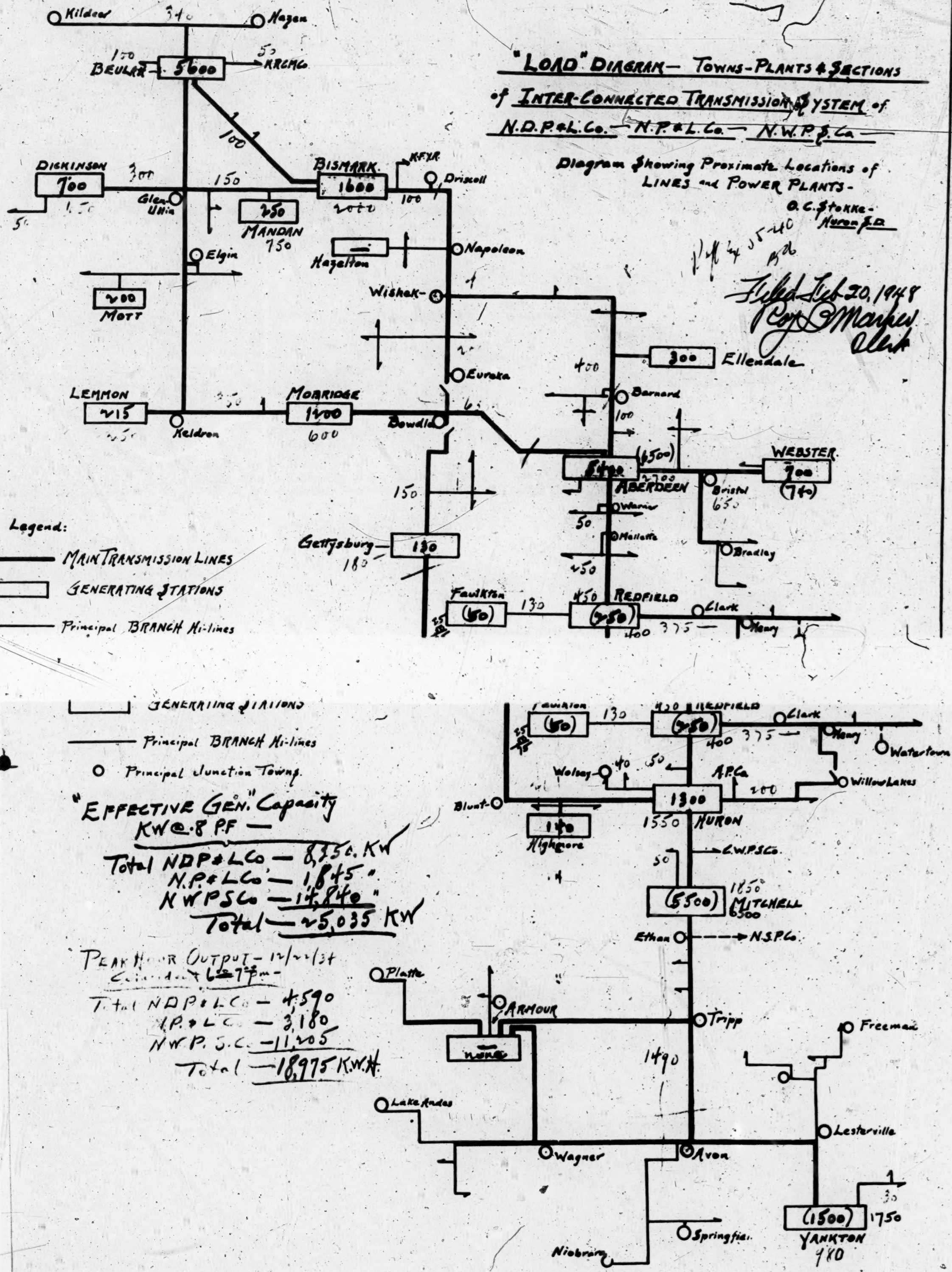
865

"LOAD" DIAGRAM — TOWNS-PLANTS & SECTIONS of INTER-CONNECTED TRANSMISSION SYSTEM of N.D.P.&L.Co. — N.P.&L.Co. — N.W.P.S.Co —

Diagram Showing Proximate Locations of LINES and POWER PLANTS -

O.C. Stokke - Huron S.D.

Filed Feb 20, 1948
Roy D. Marker
Clerk



Legend:

- MAIN TRANSMISSION LINES
- GENERATING STATIONS
- Principal BRANCH Hi-lines
- Principal Junction Towns.

"EFFECTIVE GEN." Capacity KW @ .8 P.F. —

Total NDP&LCo — 8,350. KW
N.P.&L.Co — 1,845 "
N.W.P.S.Co — 14,840 "
Total — 25,035 KW

PEAK HOUR OUTPUT — 12/22/34
Central 6 — 7 pm —

Total NDP&LCo — 4,590
N.P.&L.Co — 3,180
N.W.P.S.Co — 11,205
Total — 18,975 K.W.H.

727C

869

Plaintiff's Exhibit 55-42 869

May-23-1936

"LOAD" DIAGRAM — TOWNS-PLANTS & SECTIONS

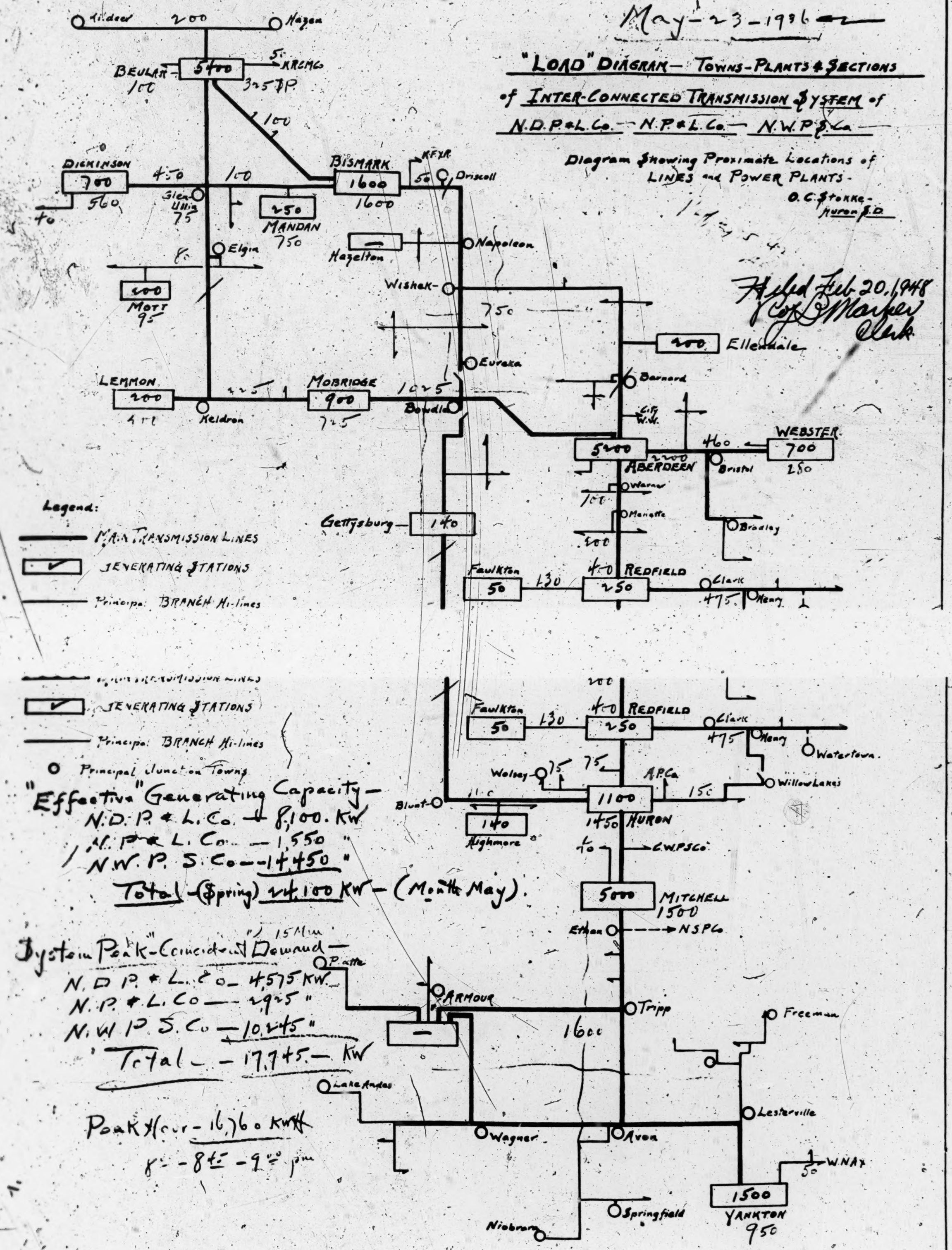
of INTER-CONNECTED TRANSMISSION SYSTEM of

N.D.P.&L.Co. — N.P.&L.Co. — N.W.P.S.Co —

Diagram Showing Proximate Locations of LINES and POWER PLANTS -

O.C. Stokke - Huron S.D.

Filed Feb 20, 1948
Cora B. Marker
Clerk.



"Effective" Generating Capacity —

N.D.P.&L.Co. — 8,100. KW

M.P.&L.Co. — 1,550 "

N.W.P.S.Co. — 14,450 "

Total (Spring) 24,100 KW — (Month May).

"System Peak" - Coincident Demand — (15 Min)

N.D.P.&L.Co — 4,575 KW.

N.P.&L.Co — 2,925 "

N.W.P.S.Co — 10,245 "

Total — 17,745 — KW

Peak Hour - 16,160 KWH

8 - 8½ - 9 pm

7272